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Supreme Court of the United States

OCTOBER TERM, 1938

No. ~~11~~ 7, Original

THE STATE OF TEXAS, COMPLAINANT,

vs.

THE STATE OF FLORIDA ET AL.

APPENDIX A, WITH REPORT OF SPECIAL MASTER

SUPREME COURT OF THE UNITED STATES

October Term, 1938

No. 11, Original

The State of Texas, Complainant,

vs.

The State of Florida et al.

DIGEST.

(All References Are to Pages of Official Transcript of Record)

TEXAS EVIDENCE

At the hearings at Dallas, Texas, commencing Monday, October 11th, 1937, the State of Texas gave evidence by the following witnesses tending to prove:

Ernest Ford Morrow, Vice President of the First National Bank of Terrell, testified that in 1920 Colonel Green, who was not a director or stockholder of the First National Bank of Terrell, on the day following the death of the President of the Bank volunteered to deposit and deposited $100,000 to the credit of the Bank to save a run upon it (17); between 1899 and 1920, Green was very active around Terrell; he was the "Kingfish of Terrell;" he had a greenhouse and experimental farm of 200 or 300 acres there (18-19). Upon cross-examination by counsel for Massachusetts, witness said the amount was $250,000 as indicated in Mass. Exs. 1 and 2 of January 11, 1921, being a letter from the President of the Bank to Green transmitting a copy of the resolutions of the stockholders (23-25); that the deposit was made to the account of his Bank by transfer of funds from the account of Mrs. Hetty Green at the Seaboard National Bank of New York to the Federal Reserve Bank of Dallas (28); witness could only recall seeing Green in Terrell between 1911 and 1920, when he came to attend the meetings of the Texas Midland Railroad and on this occasion when he assisted his Bank (30). Upon cross-examination by counsel for New York, witness said that Terrell is thirty miles east of Dallas in Kaufman County (31);

its present population is about 8,000 or 9,000 (32); Green was regarded as the outstanding citizen of Terrell (33); he was the only millionaire in the country, was interested in the development of the town and community, and if anybody there wanted help they would go to Green and generally get it (33); Green was about six feet four inches in height; he was President of the Texas Midland Railroad (34); he lived in an apartment there—at one time over a store across the street from the Bank (35); the Texas Midland Railroad then ran from Paris to Ennis, Tex., about 93 miles (35).

LAWRENCE WILLIAM WELLS, of Dallas, Tex., a civil engineer, testified that he entered the employ of Colonel Green as assistant engineer of the Texas Midland Railroad May 12, 1896, at Terrell, Tex. (38-9); this Railroad was then in operation from Ennis to Greenville; Green obtained joint trackage rights with the Cotton Belt from Greenville to Commerce and built his own line from there to Paris (39); Green was then living in Terrell, Tex., and witness was stationed at Commerce and would see him about once a month, sometimes oftener during the construction work (40); about the Fall of 1896 Green moved from Terrell to Dallas, and lived in the second and third floors of the building at Griffith and Elm Streets in the business district of Dallas (41); witness made plans for the reconstruction of this building (42); Green ceased to be President and active operator of the Texas Midland at the time of the consolidation with the Southern Pacific lines; during his connection with the Texas Midland he rebuilt it (43); Green was on the road three or four times a week (44); witness was in Green's employ 32 years (44); Green was interested in all activities that looked to the development of Texas (45); about 1907, witness made oil surveys for him from Corsicana to the north end of the Caddo Field in Louisiana (45); also made a survey for his experimental farm and laid out contours for the drainage, fences, barn, residence, chicken and green houses, etc., about 1906-7 (46); this farm was later sold to Allen and McKay (46); the Government was interested in this farm (47); Green was also interested in certain asphalt and paving companies and the Murray Company, manufacturer of gins (47-8); about 1907-8, Hetty

Green, his mother, took ill and Colonel Green talked of going to New York (48-9) and thereafter said we would have to run the road on the money we got out of operations; that he didn't mind borrowing money from her at long distance but did not want to attempt to borrow from her "close up" (49); that Green purchased a three-story building in Dallas back of the City Hall and witness made plans for the elevation of the floors into living quarters; this work was done in a very elaborate and expensive manner (49); witness identified Tex. Ex. No. 1 as a photograph of this building, which became Green's residence and the last place he lived in Dallas; this was about 1907-8; during this period Green was active in the operation of the Railroad and was there nearly every day (51); at first it was in a run-down condition; he began rebuilding it after the Paris extension was completed; he brought the first vestibule coaches to Texas and the first electric-lighted trains; it was the only road in the South with electric headlights on the engine; the road was rebuilt in a first-class manner and at that time put in the best condition of any Texas railroad; after his mother's illness when he went to New York, witness would see Green three or four times a year—twice when he came to Texas for the annual meeting and to vote, sometimes in New York (52); Green finished the reconstruction of the Railroad in the Fall of 1898; he had his private car from the Spring of 1897 until he sold the road, except for a period of twelve or fourteen months when it was being rebuilt after having burned; when it was burned the car was named the "Lone Star" and afterwards the "999" (55); the car had a vestibule and at the observation end a reception room, a stateroom, Green's room, another stateroom, a dining room, kitchen and servants' quarters, with a staff of cook and porters (56); the front and back staterooms had regular Pullman berths, 3 inches wider and longer than the standard, and Green's stateroom had an immense brass bed, because he weighed about 300 pounds and was over 6 feet tall (56-59); after his mother's death, Green came to Texas twice a year, staying about one month on each trip (56); when he did not stay in his car, he stopped at the Adolphus Hotel, Dallas (57); about November 15, 1921, arrangements had been made for an inspection trip of the Greenville to Commerce extension, when Green was taken sick and they had to change his car from Dallas to

St. Louis (57); after this illness, Green said he did not want to bother with anything unless absolutely necessary because he was devoting his time to getting well (58); he was always jovial and good natured; after his illness, he could not get around well except in a wheel chair; after going to Marlin, Tex., he would get a little better and walk with the assistance of a cane and somebody to help him (59, 60); the last time witness took Green over the line in 1927 he picked him up at Marlin and he walked from the hotel to the car leaning on a cane (60); witness never saw him walk unassisted after 1921 (60); Green bought a yacht "United States" about 1917, on the Great Lakes; he had it cut in two, brought to New York, rebuilt and shortened (60); early in 1900 witness supervised the building of the Tarpon Club near Rock Port on the Texas Gulf Coast (61-62); after 1921, he saw Green a number of times at the Waldorf and Sherry-Netherland, New York City (62), and at his business office, 111 Broadway; never saw him at his business office after 1921 (63); witness paid Green's taxes on his Texas property, made out the deeds for sales along the Texas Midland Railroad; the last deed he made for Green was in December, 1932, for a lot at Quinlan, Hunt County, Tex. (63); these deeds always showed Terrell, Kaufman County, Tex. as his residence; if they did not, Green would send them back for correction (64); in a conversation with Green in the American National Bank, now the First National Bank of Dallas, soon after they moved in their new building, witness asked Green why he was so persistent in calling Texas his home, and he threw his feet on the desk, spat on the floor and said "I like it, because down here I do as I please; if I was in New York and was to do this, they would throw me out on my ear—I like the friendliness of these people and the wide open spaces" (65); after his illness, Green's hobbies were his coin and stamp collections (66); he had 17 or 18 trunks of the collection when he moved (67); witness saw this collection at Marlin, Tex., at the Waldorf-Astoria and Sherry-Netherland in New York City and at the Round Hill Farm, Mass. (67); he never saw Green without either books of stamps or coins (68); the only reason given by Green for leaving Texas was his mother was ill and he had to be in close touch with her affairs (68); Green continued to be in touch with the operation of the Texas Midland Railroad and witness wrote him

whenever anything had to be done and after waiting eight or ten days for a reply, he would go ahead as he thought best; when Green came in May and November he would bring all the correspondence with him and go over it with witness (68-9); for 29 years witness received handsome Christmas presents from Green; Colonel Green often talked about his regard for Texas; his remarks were always friendly to Texas and as witness saw it, with the utmost love for the country (69). The Texas Midland was originally 54 miles long at the time Mrs. Green foreclosed a mortgage (73); the first extensions were made in 1894, using a 70-pound rail and ballast of gravel and burnt clay; about 1918, it began to feel the competition with trucks and adopted a pick-up and delivery service (75); Green always insisted on the Railroad being kept up; they had the first gas-electric motor cars, the first cafe service—ideas originated by Green (76). Colonel Green started in 1897 studying certain subjects, had an elaborate physical laboratory at Terrell and witness coached him in natural philosophy, astronomy, geology, etc.; he was a fine student, had a good memory, could read a book and almost repeat it verbatim (77); witness built Green an observatory on the top of the Elm and Griffith Street house in Dallas, where he had a telescope and appliances for checking the weather—thermometers, rain gauges and wind gauges, the equipment used in meteorology and astronomy (77, 78); he afterwards gave the laboratory to the Girl's School at Denton, Tex.; after his illness in 1921, he abandoned his studies (78); the demonstration farm, when purchased, was poor land and Green developed it; after it was sold, some of the greenhouses were moved to the Kaufman Road greenhouse near Dallas, where he had 13 acres under glass (79); Colonel Green brought the first automobile to Texas (80); Green's itinerary was to leave New York about the first of July, go to New York in the Fall on his way to Florida, staying there probably a week, and come to Dallas and afterwards he went to Marlin and stayed there the month of May, with the exception of a day or so on the Railroad (82). On cross-examination by counsel for Florida, witness testified that Green had no railroad experience prior to coming to Texas (85); that he had contacts with Green from the time he met him in 1896 until April 1, 1928, when the road was sold (86); from 1910 or 1911, he only saw him twice a year,

at the annual meeting of the Railroad and when he came to vote in the Fall at the State Election; that the last time he voted was in 1920 (88-9); that Green's activities in Texas were between the time he came to the State and 1911 (90); the demonstration farm was trying to discover a method of combatting the boll weevil which attacks cotton, one of the principal commodities transported by the Railroad (90); Green never operated the chicken or experimental farm after leaving for New York and sold the Greenhouse a year after he left (91-2). Mrs. Green had been his housekeeper from about 1906-7 at the Elm and Griffith Street house and lived there with him (93); the household belongings were moved from Texas (94); soon after going to New York he sold this apartment in Dallas (94); Green had about 300 lots on the Texas Midland, which witness handled and upon which he paid the taxes, etc., after Green left (95); witness frequently saw him in Florida (96); Green went to Marlin to take the mineral baths and treatment from the Buie Clinic (99); Green's last visit to Marlin, Tex., was about 1935 and prior to that 1927 (99-101); the last lot witness sold was in December, 1932 (101). On cross-examination by counsel for Massachusetts, witness testified that Green was always fond of experimentation; he tried an air-cooling arrangement and sprinkler system in railroad cars (103); he was interested in electricity, photography, X-ray machines, Marconi wireless, seismograph and other equipment necessary to study natural philosophy and showed a desire to acquire knowledge on these subjects (104); the first time witness was at South Dartmouth they were experimenting with radio, 20 or 25 men were working with different instruments and Green said he hoped to develop radio so as to sell one to every farmer at a price not exceeding $10.00; Green combined scientific study with humanitarian impulses (106); he had an equipped landing field for airplanes, a hangar and electrically lighted field (107-8); the last time witness was at South Dartmouth was the Spring or Fall before he sold the Railroad in 1927 (111); Green was very democratic, would mix in with farmers, invite them to lunch and supper with him; put on overalls and go through the shop, get on an engine and run it; he was more interested in the society of the average man (114); he talked about his mother before her death, admired her and seemed devoted to her memory (116-117). Witness identified Mass. Ex.

No. 3, dated November 24, 1910, a letter from Colonel Green to his mother offering to come to her whenever she needed him (119). Witness stated that about 1912, he was with Green in Terrell when his right to vote was challenged and Green showed he had paid his poll tax and several of his friends vouched for him, and he was permitted to vote (123-128). The attention of the witness was directed to Mass. Exs. 4, 4½ and 5 regarding shipment to New York of Green's automobiles from Texas in July, 1911 (133-135), and his household goods from Dallas to New York (137-140). Counsel for Massachusetts called the attention of the witness to Mass. Ex. No. 7, dated May 20, 1922, from him to Green in which he used the expression "your Terrell friends are very anxious to hear how you stood your trip home" (143). Witness further testified that on Green's usual November visits to Terrell he would spend from one to three days on his inspection trip and time his visit so as to vote (149); he would not leave the car to spend a night in any building in Terrell (150); that 1920 was the last time he voted (151); after his injury in 1921, in the Spring of 1922 Green made his first visit to Marlin (152); Green attended the annual meetings of the Railroad in the Spring of 1923-4-5-6 and 7 and so far as witness knows was not in Texas again until 1935 (154); that he has no recollection of Green being in Texas in the Fall of 1921 (155); these trips he made to Texas in the Spring and Fall until 1920 were of about two to three weeks or a month duration (158); from 1911, the actual operation of the Railroad was in witness' hands under Green's direction; that during the period of Government operation, he was the only official kept on the job as train master (164); that the Tarpon was a fishing club, which was destroyed by hurricane in 1904 (165); the undeveloped town lots remaining unsold at the time of Green's death were assessed for about $2800 (165); the Green Floral Company was sold after he left in 1911 (168); after 1911, Green had no other business enterprises left except his stock interests (169). On cross-examination by counsel for New York, witness testified that he did not visit Green while he was living in Terrell but visited the Elm and Griffith Street house in Dallas many times; that Green had three servants and a housekeeper, afterwards Mrs. Green (176); when he moved to the Commerce Street house, there was no change in his establishment (177); Terrell then had a population

of about 5,000 in 1896 and about 7,500 in 1911 (177). Between 1896 and 1911, the Railroad was not a financial success (180); when he saw Green in New York in the Fall of 1911, he was living at the Waldorf-Astoria and had a secretary, Miss Harlow's maid and a young lady who was helping with the stamps and coins (181); he had from 17 or 18 trunks for his stamps (183); he continued to see Green at the Waldorf-Astoria from 1911 to 1929 (185). Upon redirect examination by counsel for Texas, witness testified the returns and reports made by the Texas Midland Railroad to the Texas Railroad Commission all showed the residence of the President as "Terrell, Tex." (198); when Green went to New York in 1911, he said his mother was sick and he had to go up there to help out and take care of her business (199), and after that the private car was kept on the line in Terrell and available for Green whenever he wired for it (200); the annual meetings of the Railroad usually were held in the car at Terrell or witness' office in Terrell (202); Green was designated as President until about 1932 (203); Terrell was the headquarters of the Railroad and Green received mail there until April 1, 1928 (204); some time between 1911 and 1916, when the Texas Legislature was contemplating some change in the income tax law, witness, Colonel Green and Allen had a conversation and at that time they were trying to get him to change his residence to Florida and all they ever got out of him was "No" and a shake of his head (206); that in remodeling the Commerce Street house they tore out everything but the floors and rebuilt, and in the Elm and Griffith Street building, Green had two floors under lease and probably the roof (209); that witness registered once with Green in Chicago at the Blackstone Hotel and Green wrote "E. H. R. Green, Terrell, Texas" (210). On recross-examination by counsel for Florida, witness testified that the Star Island home was entirely completed and landscaped when witness was there; it was a large home (215); they were all homes in that vicinity and Green had a landing place for his boat (217); when Green was in Florida, witness addressed him there about everything excepting the weekly Railroad reports which went to his office, 111 Broadway, New York (218). On recross-examination by counsel for Massachusetts, witness testified that the private car was owned by the Railroad Company and not by Green (229). Counsel

agreed that the First National Bank Building in Dallas was opened for occupancy September 2, 1918 (234).

THOMAS E. CORLEY, of Terrell, Tex., testified that he first met Colonel Green the latter part of 1892 or early part of 1893, shortly after he arrived in Terrell after the purchase of the Northeast Branch of the Texas Central Railroad (241). Witness was then connected with a private banking institution called the Harris Bank; Harris was the owner of the Harris Block or Harris Opera House, and Harris had the opera portion of the Building remodeled to suit Green's wishes; a portion of the Building was converted into general offices and the southern portion was arranged in accordance with his plans for living quarters; the northwest corner room was Green's office, the adjoining room his bedroom, adjoining this was another bedroom, then the dining room, kitchen, bath room and hall; he had a cook and two negro boys who served him as porters (242-3); J. B. Tartt, the first auditor of the Texas Midland Railroad, and witness occupied the bedroom adjoining Green's; Green was then about 24 years old and heralded as the youngest railroad president in the United States at that time (244); Green was born in London, England, in 1868, and is buried in the family burial ground at Bellows Falls, Vermont, where his mother and ancestors are buried (245); he died at Lake Placid, N. Y., June 8, 1936 (246); witness lived with him for several years until he gave up his apartment; afterwards he lived at the old Windsor in Dallas (246); then in the upper two floors in the Elm and Griffith Street Building, Dallas, Tex. (247); these rooms were fixed up comfortably but not elaborately as a residence, equipped with dining room, kitchen and sleeping quarters; he had servants there (247-8); afterwards Green purchased the Commerce Street Building east of the Municipal Building in Dallas, which was converted and re-arranged into a place of residence for him in Dallas; he also had a suite of rooms in the Oriental Hotel in Dallas at the time he was connected with the Republican Headquarters (248); his private car was designed to meet his needs and frequently occupied by him; it was parked in Terrell and made available for his use when he so desired (249); Green bought a tract of land

near Terrell and developed it into a farm—the Green Demonstration Farm—improved it extensively and made trips there (249); he occupied his car for living quarters intermittently but very often; there were times when he used it as much as a week or ten days up and down the line; he spent considerable time in the study of astronomy; the original car was burned and re-built; it must have been out of commission six or eight months; this car was available for Green's use at all times up to April 1, 1928 (251); the car had an observation end for his quarters, a reception room, two or three staterooms, Colonel Green's room equipped with a very large brass bed, a dining room, kitchen, a place for the servant, ice boxes, etc.; the car was built originally in East St. Louis by the St. Charles people who built the "Lone Star Special" which was on exhibition at the St. Louis World's Fair (252); up to the time it was burned it was known as the "Lone Star"—the names of both train and car were given by Colonel Green (253). Green was interested in the development of photography, had a very expensive photographic equipment and employed a man in charge of his photographic department, paying him a good salary; he was interested in chemicals, X-ray machines, radio and had an extensive laboratory; the upper portion of a two-story building in Terrell was occupied by Green as an office and known as the laboratory (254); the experimental farm was about a half a mile from the town of Terrell, nearby the railroad, and consisted of about 200 acres; the United States Department of Agriculture sent Dr. Knapp down there and this farm was the initial farm operated under Government supervision as an experimental farm; Green was the pioneer of the movement and visited the farm daily for a long time (255-6); he said it was purely for the benefit of farmers throughout the State and the promotion of their interests; he was interested in their welfare (257); Green was a big man in all respects, mentally, physically and financially (257); witness' very close frienship with him began with his removal to Texas and continued until the sale of the road, after that he saw little of him although their friendship continued (257); after leaving the Bank, witness was Treasurer of the Railroad and afterwards took on the duties of Auditor and Secretary (259); when acquired by the Green interests, the railroad was in a bad state, was known as a "streak

of rust," the roadbed was poor and it had little equipment; it was about 50 miles long running from Garrett, in Ellis County, to Robert, in Hunt County, and when sold to the Southern Pacific in 1928, it was over 125 miles long and first-class in all respects, had been ballasted from one end to the other, had better bridges, first-class equipment and heavy rails (261); the outstanding improvement in equipment was the "Lone Star Special" which was completed in St. Louis as the last word in railroad trains at that time; it had electric headlights, was electrically lighted, had steel underframes (261); Green was the initiator of a process of ballasting with black, waxy mud called burnt gumbo (261); the railroad made no returns on the investment to the owners (262); Green's business activities in Terrell were principally connected with the railroad, of which he was a stockholder and director, and with the American National Bank; he owned stock in the Terrell Cotton Oil Mill at one time and during the War subscribed at Terrell for $5,000,-000 of Liberty Bonds; he also bought city, county and water-works bonds; Colonel Green was not a society man but aided the baseball club and the military company, which was named for him "The Green Guards and Zouvaes;" he also organized and took a leading part in the Terrell Minstrels (263), and identified Tex. Ex. No. 2 as an advertisement of this Minstrel show. When there was a bank panic in Terrell in 1893 or 1907, Green arranged a shipment of currency through his mother from the Chemical National Bank (269); in 1910 and 1911, when he said it was necessary for him to go to New York on account of his mother's illness to attend to her business affairs, they were told to use their best efforts in the operation of the railroad; witness saw Green every day when he was at Terrell and kept in touch with him and knew his whereabouts at all times when he left the State; he saw him on his return always with the exception of the time when he was in Marlin in 1935 (271); after he sold his farm about 1904 or 1907, Green did not come so often to Terrell (272); after 1910 or 1911, he came down twice a year and witness saw him whenever he came—the early part of the year was usually to attend the annual meeting and make an inspection trip of the railroad and in the Fall he came to vote in the Fall election and witness has seen him vote in Terrell (274-5); Green was an ardent Republican, quite active for years in Republican politics,

being a National Committeeman (275); he was taken ill at the Adolphus Hotel, Dallas, about October 15, 1921, and did not make his usual inspection trip of the railroad but went back East; he was in such condition he could not walk and had to be carried in a wheel chair (277-8); after that witness visited him in New York, South Dartmouth and Florida and saw him on his visits to Marlin, Tex.—in both Marlin and Terrell usually and in Dallas frequently (278); his health was poor and he had difficulty in getting around (278); the last time he saw him in 1928 or 1929 was at Miami, Fla.; visited him there twice (279-280); Green told witness on the occasion of one of these visits that "the recovery of his health was the prime object now and he wanted to get well, and he had to be very careful in his movements, and he wanted to do everything that would enable him to recover his health" (280); he stated he had missed the association of his Texas friends very much, it was a source of much regret that he was not able to see his Texas friends as much as he liked due to his condition of health (281); he did not want to be bothered with business or anything that would occasion any worry on his part (282); Green told witness on numerous occasions that his dearest friends were in Texas, he said they were more or less cold-blooded up East and after his money, that he appreciated that his Texas friends were his real friends and not continually harassing him or trying to separate him from his money, that he appreciated their friendship and they were very dear, close, warm, personal friends, with whom he was associated for years (282); witness mentioned a number of these old friends as leaders in the business life of Dallas, outstanding business men, most of them,—many of whom are now dead (283-284); that Green's invariable practice was to register from Terrell, Tex., at hotels and witness recalls definitely that he so registered at the Southern Hotel at St. Louis on one occasion (284); from February, 1903, when he became auditor of the Railroad, until the sale April 1, 1928, with the exception of Federal control, in all reports to the Railroad Commission of Texas and to the Interstate Commerce Commission, he was instructed by Green to put in his address or residence as Terrell, Tex.; the reports were signed by Green personally and were under oath (287-8); Green said repeatedly, on frequent occasions, that his legal residence was Terrell,

Tex.; never heard him say it was in New York or other place than Texas (289); "I would say that he considered Texas his home" (291); Green expressed himself as "very fond of Texas and of Texas people, and he considered them the best friends he had on earth; his best friends—those friendships were formed when he was in his prime" (292); in 1917, after his marriage, on a visit to Galveston, witness was on the "United States" (292); Green was deeply interested in the welfare of witness' two daughters, sent them to college and remembered them on birthdays and at Christmas, was generous and kind-hearted to them and they loved him dearly; he bore the expense of their education without any solicitation from them or witness (295). On cross-examination by counsel for Florida, witness testified when he first became acquainted with him Green was about 24 years old and told him that he had been connected with the Louisville & Nashville Railroad for a time; there was no time when he did not have a knowledge of railroads; he was pretty well equipped when it came to actual knowledge (296-7); after leaving Terrell and coming to Dallas, he finally fitted up quarters in the building that he bought on Commerce Street and continued to live there until he left Texas, with the exception of the time spent in the car (298); the demonstration farm was sold just before the Railroad was sold and Green had made disposition of his other activities (299); after 1911, he came to Terrell, Tex. twice a year, would stay a week, make an inspection trip over the Railroad and return East, sometimes he would come to Dallas to visit among his friends but did not stay any particular length of time (301); at Marlin there were hot wells and baths, sanitariums and clinics; Green was greatly benefitted by the treatment received there; he said it was about the only benefit he received from any source and he came there for this treatment (302); witness did not see him in Texas after he sold the Railroad and did not see him in 1935, when he was there (304); "when he left in 1910, our understanding in talking to him was that he expected us to operate the Railroad without any financial aid from him or his mother" (304); in 1928 witness was a guest of Green at the Star Island, Florida home (305); it was a rather extensive edifice of the Spanish type—a very large spacious home and had a great number of guest rooms, elaborate furnishings, wonderful tapestries and every con-

venience, with typical grounds of houses of that character in that section; the grounds were landscaped and there was a dock for the yacht (307-8); he had automobiles there for himself and Mrs. Green (309); he had his secretary and a young lady who took care of his stamps and several servants—a fully constituted household (310); witness saw him again in 1929; Green was a kindly man who endeavored to make people feel in a good humor (311); those who knew him liked him (312); witness has been with him at the polls when he voted but cannot give dates prior to 1921 (313), but not after his illness (314); Green frequently told witness he considered Texas his home (314); Green and witness were very close friends and discussed many matters of that kind but witness cannot remember just what the occasions were (315); Green spoke of Texas as his legal residence and when reports were made to the Interstate Commerce Commission witness put in what Green said was his legal residence (315-316). On cross-examination by counsel for Massachusetts, witness said that Green had quarters at a hotel in Dallas between the time he gave up his bachelor apartment in Terrell and took up the Elm Street quarters in Dallas; he never saw Miss Harlow there and visited Green very seldom on Elm Street (317); witness was married in June, 1902, and Green came to Dallas prior to that; witness and his wife never called on Green at his Dallas home (318); that he first met Miss Harlow about 1895 or '6 upon a visit to Terrell (318); she was acting as Green's housekeeper at the Commerce Street house and he heard that she was sometimes known as Mrs. Stanton (319); witness visited Green at Round Hill two or three times; Green was interested greatly in radio, had a broadcasting station and was in close touch with the Massachusetts School of Technology, had some students there working at some scientific problem (320); he had an airport planned but not developed when he was there (321); Green was interested in his stamp and coin collections; he had many varied interests (321); the South Dartmouth house is a magnificent structure, it is well built and looks like it ought to last through the ages; witness asked Green why he made it so elaborate—why he built such a magnificent home, and he told him that he and his sister had plans to commemorate his mother's memory in some way—to establish a school or some memorial for his mother; witness thinks it is on the farm of some of his ancestors that came

over on the Mayflower; it is quite a historic landmark (322); he got this opinion from talking with Green; has heard him many times mention that his mother had been brought up from childhood in New Bedford; he always referred to his mother in the dearest terms; she frequently wrote him and witness saw messages from his mother containing endearing messages; she was fond of him and he reciprocated it (323-4); witness identified his letter to Green of July 6, 1921, in which he said "I hope that you are enjoying the comforts of the new home at Round Hill" (329-331-2); witness asked Green why he built such an expensive residence—you can call it home or residence, I do not know how you designate it—why he put so much money into the place that he could not need and witness' recollection is that he said he and his sister had planned to construct a memorial to his mother in some particular way to commemorate her memory eventually—he did not say when (333, 344-5). On cross-examination by counsel for Massachusetts, witness testified he understood from Green that his reason for leaving Terrell for Dallas was to get better accommodations (338-9). Witness identified letter from Green to his daughter, Prudence Corley, dated New York City, November 10, 1921 (Mass. Ex. 11), in which Green said "the trip home was made safely" (352); Green had a library containing a number of scientific books that he gave to the Dallas Public Library at the time he left Terrell (353); he was very much interested in the education of young women in his later years and had perhaps 25 protegees that he was educating, among others, the two daughters of witness, who went to Wellesley College (355); they were then about seventeen or eighteen years old (356); Green bought dresses by the carload and when they were at his house he would let them take their choice; he had dresses, jewelry and other things that he gave the girls on their visits to him; he kept order forms from which he ordered the dresses (358-9 and 362-6); after the sale of the Railroad, witness wrote to Green about an application with a banking institution in which Green was interested, to which Green replied that the only banks in Texas in which he had any interest were the American National Bank of Terrell and the American Exchange National Bank of Dallas, and that he took no active part in the management of either and his interest was nominal (367-8); witness testified that the annual meeting of the Railroad was held

on the second Tuesday of May, which would fix the time of Green's Spring visits; witness could not state definitely he came twice a year after 1921. On cross-examination by counsel for New York, the witness testified that Green was Commissioner of the World's Fair in St. Louis in 1904 and it was about that time he registered in St. Louis (371); to the best of witness' knowledge and understanding, Green spent his Summers at South Dartmouth and his Winters in Florida and during a portion of that time he maintained a suite at the Waldorf-Astoria in New York City, afterwards at the Sherry-Netherland (373); witness understands a man can have a number of homes at the same time but not being a lawyer he is unable to distinguish between temporary and permanent residence (374); Green had a flair for publicity and was doing everything to increase the business of his line and to make friends and may have started the military organization at Terrell with that in view (375). Witness identified N. Y. Ex. No. 1, a card dated August 1, 1916, reading "Kindly change my address to No. 111 Broadway, Room 1104, New York City. Old address: 7 West 90th Street, New York City, N. Y., E. H. R. Green." (378)

Witness also identified N. Y. Ex. No. 2, addressed to him, announcing the marriage of Miss Mabel Emerson Harlow to Edward Howland Robinson Green on Tuesday, July 10th, 1917, at 102 Sheridan Road, Highland Park, Illinois (380). He further testified that the suite at the Oriental Hotel was primarily for political purposes (388-392) and the car primarily for Railroad affairs (389); that he saw Green at the Waldorf-Astoria in New York after 1911 but only remembers that he had a nice suite there (394); never saw him at 5 West 90th Street or the Sherry-Netherland (396); after Green left, the affairs of the Railroad were in charge of Mr. Wells, Mr. McKay and witness, directly under Green, to whom all reports were made (398); witness has seen his collection of stamps, coins and paper money but not the entire collection; that Green derived a great deal of pleasure from it (398-9). On cross-examination by counsel for Mrs. Green, witness stated that Green liked to talk about his Texas friends and on various occasions stated that "he would always consider Texas as his home" (401). On recross-examination by counsel for Florida, witness said Green was interested in automobile races and in the races at Ormond Beach, Florida (403-4); that prior to Green

becoming ill in 1921, he had been very active in a business way, with business ventures, in helping the community where he lived; that after 1921, he stated to witness that his prime object in life was the recovery of his health (404); that on his visit to South Dartmouth, witness asked Green what his purpose was in erecting a building of that character and Green told him that he and his sister had planned, eventually, to leave it either for some girls' institution, or something like that, to commemorate his mother's memory; that along about that time he and his sister had given $500,000 to Wellesley College, and they erected on the campus a hall bearing Mrs. Green's name as a commemoration, and he told witness they had that in view—they had plans, ultimately, but he did not say when, where or how (405-6). On redirect examination by counsel for Texas, witness said he recalled that on the yacht "United States" the words "Galveston, Texas" appeared, in accordance with Green's desire regarding the registration of the boat (408-9). On recross-examination by counsel for Massachusetts, witness testified that Mrs. Hetty Green died July 3, 1916, and these changes from 7 West 90th Street to 111 Broadway, New York, were changes in the office address (411-12).

William Madison McDonald (colored), known as "Gooseneck Bill," of Fort Worth, Tex., private banker, testified that he was President of the Fraternal Bank and Trust Company, of which he was formerly owner (419-20); that he was born in Terrell, Kaufman County, Tex., attended public schools and Roger Williams College and afterwards taught school at various places in Kaufman County; that in 1885 he became interested in the Masons and other fraternal organizations which carried him all over the State into any county where the colored people lived; that he is now 71 years old and became interested and active in Texas politics in 1890; in 1895 he was the dominating member of the Republican Executive Committee (422); (witness further described his political activities) (422-431); that Colonel Green lived in Terrell and witness lived at Forney, twelve miles west of Terrell; that Green paid Mr. Canon $75 for getting him his place as a

delegate to the National Convention; that Green thought witness had asked for $7500 and gave him a check for that amount and when he was told it was only $75, Green tore up the original check and made out a new check for $75 (431); that this made two delegates from Kaufman County, Tex., which was very unusual (432); that Green contributed $1,000 to the Campaign Fund; this was Green's entrance into Republican politics in Texas in 1896 (432); from then until 1928 Green continued interested in politics and the Republican Party, if giving money to carry on the work and running it meant anything, then he was interested (433); witness removed from Forney to Terrell in 1896 at the request of Green, who had been elected State Chairman and wanted him near him (433); they were not able to seat the Texas delegation to the National Convention; in the Summer of 1896, the Republican Party held a State Convention at Fort Worth (434); Green represented Kaufman County in that Convention with witness (440); that there has never been a Republican in Texas more popular than Green (441); at the State Convention at Fort Worth in 1898, Green was elected State Chairman of the Executive Committee (441); in 1900, witness and Green were delegates from Kaufman Congressional District to the Republican Convention at Waco, Tex., in March, 1900 (442); Green was named a delegate to the National Convention in 1890 (443); Green was elected Chairman of the Executive Committee of the Republican Party of the State of Texas in 1896 and re-elected in 1898 and 1900 (450); in 1896, Green was listed in Winkler's Platforms of Political Parties in Texas as the representative of Kaufman County in the 1896 Convention (451), and in the same book he is given as the representative of Kaufman County at the 1898 Convention held at Forth Worth (454); in the faction fight, the faction opposed to the Burns-Ferguson faction was known as the Green-McDonald faction—that is Colonel Green and the witness (453); in 1900, Green was named as a delegate to the National Convention by both factions (454); in the Republican Platform adopted at San Antonio in September, 1900, there was a commendation of the work of Green as State Chairman during the preceding four years which witness had written and in which it was stated "we commend most heartily Mr. Green's administration of party affairs and express the hope that he may yet be in-

duced to reconsider his announced purpose not to be a candidate for re-election and consent to accept another term as State Chairman" (456-7); at the Convention at Fort Worth in 1902, Green was made permanent Chairman (457-8); in 1904, there was a State Convention at Dallas, in which Green was Chairman of the Committee on Resolutions (459); there was a split and two Conventions were held; Green stood with the Hawley and Lyons factions and the Black and Tans held a Rump Convention and Green was on that as a delegate too (460); that Green did not go to every Convention, he was in the Adolphus Hotel at Dallas when he was nominated for Governor at the Houston Convention in 1906; Green wired witness at Houston that he had received a telegram from his mother that he must not accept any political nomination (463). Counsel for Texas offered and read Tex. Ex. No. 3, a letter from Mrs. Hetty Green to Colonel Green, reading "My dear son— The compliment your great and adopted state has tendered to you, I know you will not forget your Mother who needs & demands your assistance part of the year. In haste loving your Mother Hetty H. R. Green Bellows Falls Aug 27th/06" (466).

Witness further testified that the Green-McDonald faction was active until 1928, when it elected its delegates in the usual way (470-1); witness and Green had an agreement that in the event their delegate was seated in the National Convention Green would bear one-half of the expenses and witness the other half—about $23,000; Green paid one-half and witness the other half but they got knocked out and nothing came of it (475); that they then bolted and Green and witness went for Al Smith; that Green did not tell witness he would not further participate in Texas politics (476); Green told witness he did not want to be on the National Committee because he would have to be moving around, going up steps, etc., and he wanted witness to use his stamp as he had done which would give him the publicity, and "he wanted to go back to Texas and make this his home, and he could attend to that if I would see that his office was run as it had been when he was State Chairman before" (477); that from 1896 to 1928, it was witness' privilege to go to Green's room, ride around in his car with him; that he went to lunch with him in his office in the Trinity Building in New York City; was

with him two days in 1920 (478); never saw him at his Summer place; Green told him he was building some sort of a "contraption" with a lot of rooms and wanted him to come up and see it but he never has (479); never went to his Winter home in Florida; Green told him he was building a home on an island and wanted him to go down there; he told him he was going to come back to Texas and build him a home somewhere, that the climate was such that he could not get around in Winter—he would slip, could not walk on the icy paving or freezing sidewalks and he was coming back and that was the reason why he wanted to be National Committeeman so that he could have something to engage his time; he said that that was the only position that he went after that he got and really wanted (479-480); when Green had the Elm Street quarters in Dallas, Tex., witness went up there two or three times a month and played cards with him; Green stayed out of local politics but backed Mr. Colquitt in electing a Mayor of Dallas at one time (480); Green elected Colquitt to three different positions; when Colquitt ran for Governor and was elected, he put Green on his staff as First Colonel—that is where he got the title (480-2); Colquitt lived in Terrell and was Editor of a paper there; he was elected Railroad Commissioner of Texas about 1908 and Governor in 1910 (483); witness supported Culberson for Governor in 1896 (483); Green's policy was if he could not replace Democrats with Republicans he would prefer to elect the best Democrat (484); while the Conventions were on Green would leave his railroad business and attend them, living in his private car, watching and shaking hands with the people; the people liked him because he was democratic (485); he mingled in all classes of society in Texas (486); beginning in 1896, Green drew two or three $25,000 checks, which were cashed and the money spent (487); when Foraker was running for the nomination in 1908, Green told him he gave the National Campaign Committee $50,000 (488); in 1912, the Green-McDonald faction succeeded in seating its delegates to the Republican Convention; they were committed to William Howard Taft and in 1916, the Green-McDonald faction were seated and were all in favor of Mr. Hughes, who was nominated unanimously; in 1920, the Green-McDonald faction was for General Leonard Wood, who was the personal choice of Green (490-1); in 1916, Green said

his mother had just died and he did not care to be in the limelight (491); in 1920, he did not attempt to get any office; in 1924, there was no contest in Texas but his faction voted for La Follette (493); from 1896 to 1900, Green was the absolute boss of patronage in Texas (493-495); witness had been in Green's private car from the time he first got it until he left Terrell (496); it contained a desk for himself and his stenographer, a big stateroom for himself and one for his guests, place for the porter and cook (496-7); witness has been in that car all over Texas and to St. Louis; Green went all over Texas and into Mexico, to the Northwest States and followed the Ringling Brothers show (498-9); last time he saw Green he said he was not what he used to be, his leg was giving him trouble and he was not well (498-9); Green, when he first saw him, was about six feet, four inches tall and weighed about 250 pounds; the last time he saw him was at Marlin and he was in bad shape (499-500); in 1935, when he was in Marlin, he called up on the telephone and Mrs. Green told him the Colonel was desperately ill and the doctors prevented any one from seeing him. On cross-examination by counsel for Florida, witness testified that he first met Green in February, 1896, and knew him from then on; witness bought the Bank in 1912 and sold it in 1930 (503-4); never saw Green in Texas after 1910 more than twice a year (505); Green was not living in Texas when witness sold his Bank in 1930; witness thinks he had a Summer home in Massachusetts, a Winter home in Florida and probably a business office in New York (506); the last time he saw Green in New York was in 1920 and before that when witness was in politics he was up there nearly every month; had lunch with Green in 1920 in his apartment; on that occasion he stayed there about twelve days (507); the last time Green was connected with politics was in 1928 and the last Convention in the State that he participated in was in 1908 (508); after 1908, he and Green conferred over the telephone about political matters (509); he kept in touch with him to get the money to campaign for Green as National Committeeman (510); in 1896, Senator Quay and not Green put up the $30,000 subject to witness' check; Green gave $1,000 to the same fund subject to his check (511); in 1898, Green put up about $30,000 subject to his check and in 1900, witness drew what he wanted; in 1902, he put up about $15,000; in 1904,

about $20,000; in 1906, about $10,000—that was the last; all were subject to witness' check (512-514); the last time he drew on him in 1928 he got one-half of $23,000 (514-515); in 1920, when he was in New York, Green gave him $25,000 in cash in $1,000 bills and witness brought it to Texas (515); in 1928, witness drew on him through his Bank for $11,000 and he honored the draft; he was as friendly with Green as a negro could be with a white man (516); he only bought the delegates the first year 1896, when he was first elected State Chairman—never afterwards (517); he saw Green once or twice a year between 1911 and 1927 and at Marlin, Tex. in 1930 (519); never saw him in Texas between 1927 and 1935 (520); Green told him he was building something to commemorate his name or his mother's name and there would be 100 rooms in it; that he was going to turn it over to some eleemosynary institution (520-523); in 1920, Green told him he was going to build a Winter home in Miami, Fla. (523). On cross-examination by counsel for Massachusetts and Mrs. Wilks, the witness testified that from 1896 Green was front-page news in the Texas papers (528); that he entered Green's employ in 1897 and continued until March 4, 1909, and was paid a regular salary; that he was in his employ when he wrote the resolution adopted by the Convention which was read into the record (529); in 1900, Green was seated as delegate to the National Convention but witness was not (530); witness was known as "Gooseneck Bill" (531); (witness gave further details of the political activities of Green from 1904 to 1928 (532-3). Green was never elected to any State office in Texas; he was nominated once but immediately withdrew (535); after 1906, Green never attended any more State or National Conventions and was never on any Committees thereafter (538); from that time on Green furnished the money and witness the activity (543-4); on the occasion when Green was interested in the Dallas Mayor Campaign and was living at Elm and Griffith Street, he told witness there was some talk about him living with a common-law wife, in the open against the sentiment of the town, that they were going to "run him out" and Miss Harlow had to go several times to Chicago and stay a month (545-548); that Green said he wanted to live in Texas; Mabel is not satisfied to live here under this cloud of all the officers who would come down and inter-

fere with them—something of that kind (545-9); on another occasion when he was up there in 1920 he said he was going back to Texas but Mabel did not want to go back to Texas (551). On redirect examination by counsel for Texas, the witness further testified that at the time Green told him he was building something up in Massachusetts he said, "There is where Mabel wants to live and I am not going to live there, and the reason is it is too cold for me up there; I cannot get around," and he further said, "I would rather live in Texas than any place on earth, and I am going to get me a home in Terrell and I am going to build me a house in Terrell; I am going to have me a summer home in Florida and escape this cold—I cannot stand it" (552). This conversation occurred in 1920; that Green said he could get the nomination as Senator from New York if he would make his residence there but he said he would not do it (553); that he told him he had adopted four Spanish or French girls, had given them an education and would give them $250,000 when they became of age (553). Wilks Ex. No. 1 was received in evidence, being a letter dated February 10, 1921, to Harry Beck, of Dallas, Tex., signed "E. H. R. G." reading "Replying to your telegram of the 9th—I am entirely out of touch with the political situation in Texas and at present I cannot say definitely whether I shall be in town the 21st, it is too far ahead" (561); that this was in reply to a telegram from Beck to Green at New York City February 9, 1921, reading "Must confer with you on Texas political situation; will arrive in New York February twenty first wire if you are to be out of city as I will come on if I do not hear from you by February eighteenth" (Wilks Ex. No. 2) (563).

The witness further testified in response to questions by counsel for Texas that Harry Beck was a member of the State Executive Committee at that time and wanted to get Colonel Green to back up his Black and Tan organization (564-5); that witness and Beck went to New York in 1920 to see Green (566); that Beck was a white man and has recently been in a serious automobile accident.

F. B. McKay, of Dallas, Texas, District Freight Agent of the Southern Pacific Railway, with headquarters at Dallas, Texas, testified that he had been employed by that Company

since April 1, 1928; prior to that from October 1, 1894, he was employed by the Texas Midland Railroad, first as clerk, afterwards as Freight and Passenger Agent (571); that he was then living in Terrell, Tex., where he resided for 33 years; that he was made General Freight and Passenger Agent in 1902 (572); that Green first appeared on the scene in 1893; the Texas Midland Railroad then intersected the line of the Texas and Pacific at Terrell, Tex., ran to Ennis, Tex., about 32 miles, in a southwesterly direction (573-4), and in a northeasterly direction 52 miles from Garrett to Roberts, in Hunt County, the terminus (575); at that time the Texas Midland was a "road running from nowhere to nowhere" (577); that the original line of 52 miles from Garrett to Roberts was built by C. P. Huntington and was intended as a feeder to the Houston and Texas Central Railroad; the latter road went into receivership and this branch came into the possession of Mrs. Hetty Green, together with another small branch extending northwest in the direction of Waco; both branches were originally intended as cotton feeders for the Houston and Central; with these two pieces of Railroad on her hands and no traffic sufficient to maintain them, Mrs. Green sent her son, E. H. R. Green, to Texas and his first act on arriving there was to sell the branch that extended to Waco (578); he then applied himself diligently to rebuilding the branch from Garrett to Roberts to make it self-sustaining; he changed the point of connection with the Houston and Central from Garrett to Ennis in 1894 and that same year extended the road on the north from Roberts to Greenville, approximately fifteen miles (579); Greenville had three roads and a population at that time of about 5,000 (580); in 1896, Green acquired trackage rights over the Cotton Belt from Greenville to Commerce, approximately fifteen miles, and the same year built an extension of 37 miles from Commerce to Paris, giving him a total mileage from Paris to Ennis, including the Cotton Belt trackage of 125 miles (581-2); Paris then had a population of 10,000 and Commerce about 2,000; Commerce was the junction point of two divisions of the Cotton Belt; that Paris was the junction with the St. Louis and San Francisco, known as the Frisco, the main lines of the Frisco from St. Louis to Paris, the main line of the Texas and Pacific and the secondary main line of the Texas and Pacific from Texarkana to Fort Worth (589); the main line of the St. Louis and Frisco line

from St. Louis to Paris, a distance of about 600 miles (583); Green built the connection with the St. Louis and Frisco to make a line to the Gulf Coast (584); this plan for a Gulf Coast line collapsed (585); there was no further extension of line mileage on the Texas Midland after that (585-6); but after the termination of Federal control in 1921, Green built about fifteen miles between Greenville and Commerce, Tex., to replace the trackage arrangement previously had with the Cotton Belt (586); in order to place the property in better shape for sale he built this gap at a cost of something like $500,000 (587); Green lived in Terrell about a year before witness went with the road in 1894; from then until 1911, he devoted the major portion of his time to the operation of the road and the officials of the road kept constantly in touch with him; he was exceedingly active in developing the territory to increase the tonnage (588-9); when Green became the President, it was a very decrepit piece of railroad (592); he bought complete new equipment in the form of engines, passenger and freight cars, established the finest passenger equipment of any road in the Southwest, substituted heavier steel rails, ballasted with a new form of ballast called burnt gumbo, a clay-like material, put in steel bridges and built station houses (593); put on larger cars and a complete passenger train forming part of a through passenger equipment train operating between St. Louis and Galveston; the train was known as the "Lone Star Special"; it was the first train operating in the South with an observation-sleeping car or observation-sleeping cars and cafe lounge cars; he introduced the electric locomotive headlights in Texas; he brought the first gasoline-electric motor cars South, after the automobile had become a factor in transportation; they were said to be the finest cars at that time operating in the United States and had a seating capacity of 100 passengers; they were propelled by electricity, generated by gasoline engines on the cars and capable of a maximum speed of 65 miles an hour (594); the passenger service originally consisted of two trains each way daily and the encroachment of highway competition reduced it to one motor car each way daily (595); the highway competition reached its peak in 1915 and it was estimated that 40% of the local passenger and freight traffic had been diverted to the highways and was never recovered; Green introduced gadgets for opening windows, vestibule cars, experimented with a cool-

ing system and ran short excursion trains to bolster up passenger business; that as the result, the Texas Midland was looked upon as the best equipped short line in the Southwest (595-6); (Tex. Ex. No. 4 was admitted to show Green's interest in Texas and his railroad activities (599-610). Between 1893 and until the sale in 1928, the Railroad had an outstanding character as a one-man railroad and Green was that man; Green's living quarters in Terrell at the time witness went with the Railroad were in the Harris Opera House on the main business street (611); he also operated a demonstration farm of about 200 acres in Kaufman County four or five miles from Terrell (612); it was devoted mostly to the cultivation of cotton, chickens, pecans and flowers (613); in 1903, the Mexican boll weevil had extended into Texas and devoured the cotton crop to an alarming extent; Green became much aroused and at his own expense established this experimental farm and turned it over jointly to the Federal and Texas Agricultural Department, provided equipment and actively encouraged experiments to combat the weevil; as a result, joint bulletins were issued recommending early-maturing North Carolina cotton seed, which was adopted generally by farmers throughout North Texas; the principal co-worker was Dr. S. A. Knapp, formerly President of the Iowa Agricultural College; he was the first General Field Agent of the Federal Agricultural Department (613-615); this was the first demonstration farm ever established (616), and cost Green about $75,000 (617); the cultivation of flowers at Terrell led to the organization of the Green Floral and Nursery Company, engaged in the wholesale flower business, capitalized at $150,000 and earning 15% (618-19); Green organized a professional baseball team for the promotion of passenger business over the Railroad; his private car known as "Lone Star" or "999" was kept at the shops in Terrell when not in use; when used by Green it was either parked at Terrell or some other station on the Texas Midland Railroad or at Marlin (620-1); Green remained in the car three or four days and nights in succession—the average time spent on the car was three days per trip; witness was with him on all inspection trips, which were made usually twice a year during the time his health permitted it (621); prior to 1911, Green made frequent trips on the car and frequently occupied the car when he did not make any trips; witness occupied the car with him

every night when no trips were made; it was usually parked across from the station at Terrell and was used by Green as a combined residence and office (622-623); about 1900, Green acquired living quarters at Dallas but was in Terrell every day; at the time he took over the Railroad operation he made Terrell his headquarters and established the shops at Terrell; he was very explicit in requiring that Terrell be shown as his place of residence in preparing any affidavits or reports for the Interstate Commerce Commission or the Texas Railroad Commission (623-624); in 1911, Green informed witness it would be necessary for him to spend more time in the East because of his mother's advanced age and illness; prior to that he made one or more trips East but never relaxed his close control of the Railroad prior to the sale in 1928 (625-6); "we reported to him on the most minute matters and he personally inspected the Road usually twice a year;" about 1911, Green made it plain to witness and his two associates in the operation of the Road that they would have to make the Railroad float or sink with it, that he would put up no money for its operation (627-8); witness tried to interest connecting carriers in acquiring the Railroad under a lease by Green's instructions and a lease-contract was negotiated with the Southern Pacific which was suspended by the taking over of the Railroad under Federal control in 1918 (627-30); the Railroad was returned in 1920 and at Marlin in 1921 or 1922, when he was there for the first time, he instructed witness to resume efforts for the disposition of the Road and it was finally sold to the Southern Pacific in May, 1927, effective April 1, 1928, (629-630; 632-3); in 1915, when Green found they could not successfully meet highway competition, he instructed witness to find a lessee for the Railroad (635); the proposition of purchase was made to him in 1927 by the Southern Pacific; Green made no effort to sell and at one time thought of putting his busses and trucks on the Road (636); at one time he considered taking up the tracks and converting the roadway into a high speed toll road and finally decided that the best solution was to try to pass the burden to one of the connecting systems (637); in August, 1928 or 1929, witness and Mrs. McKay were guests of Green at South Dartmouth and when witness commented on the size of the house, he said "he probably would convert the house into a home for old couples" (637-8); after 1915, his health was the chief concern; Green said in sub-

stance that he had "one home for the Summer time, on home for the Winter time and he would not stay in Massa chusetts during the Winter season; he would not stay i Florida during the Summer season" (638); "I tried o several occasions to interest him in acquiring at Marlin; due to some five or six annual trips that he made there, his life was undoubtedly prolonged by the treatment—the effect of the hot mineral baths at Marlin" (639); witness was responsible for him going to Marlin; he received a telegram from Green in 1921 asking him to investigate Texas resorts, of which there were a number, and he did so and recommended Marlin and was directed to make a reservation for Green and his wife; at that time he was in such condition he could not bend his knee and they had to put a blanket down on the steps and slide him down to get him out of the car and into the wheel chair (639-640); he stayed there two or three weeks and walked when he left; witness urged him to acquire a home there and other friends did likewise; his reply was the idea struck him all right but he did not feel the condition of his health would permit him to make the long train trips to Marlin—he could not stand the long train trips to Marlin (640); about the latter part of 1900, there was a replica of the New Orleans Mardi gras at the Dallas State Fair and Green was the caliph (641); that witness knew of Green's connection with the American Exchange Bank of Dallas, his interest in the Texas Bithulithic Company, the Uvalde Asphalt Company and his purchase of highway bonds of Kaufman County and State of Texas Water Works (643); (Tex. Ex. No. 5 was given in evidence to show that Green subscribed $32,800 to the Texas Bithulithic Company (645-6). Witness further testified that Green expressed the thought that the lignite deposits of Texas represented one of the most important mineral resources of the State and installed in the shop at Terrell a lignite gas machine as motive power for the operation of the shops (646); he was instrumental in drilling a number of oil wells and invested in the Murray Company which drilled a number of offset wells (647-8); also in the Dallas and Osage Oil Companies (649); he had geological maps showing the possibility of oil along the line of the Texas Midland and encouraged drilling, and some miles east of the Railroad oil was discovered (650); he became interested in the American Round Bale Cotton Company of Boston and either directly or through his mother financed the construc-

tion of ten round bale gins along the line of the Texas Midland; but it was a mistake because all of the cotton produced in Texas is based on the square bale method, millions of dollars were involved in the gathering of cotton, the baling of it and the compressing of it until the time it is produced until it is put on board the ship, and it is said that fifteen men on an average live on one bale of cotton from the time the farmer puts the seed in the ground until the bale is put on board the boat; that in introducing the round bale method, Green was going up against all the invested millions in the square bale method, was putting a good many men out of employment; so much so that those ten gins in due course of time all were destroyed by fire (652); that was around 1905 (653); Green collaborated with one of the oil mills to refine cottonseed meal so that it might be used for human consumption; that was between 1905 and 1911; this was mostly educational propaganda to get the people to eat the meal; he also on his demonstration farm near Terrell experimented on a small scale with terracing of land to prevent erosion (654-655); there were two distinct periods in Colonel Green's life—the first period 1911 was the breaking of his mother's health and in 1915 he became concerned with his own health—an interval of four years—and in 1921, when he really did become alarmed (656); from 1918 to 1920, witness was out of touch with him (658); in 1915, witness had a conversation with him in which he said that he considered his real friends to be in Texas (659); they would get what they called an itinerary of his movements from his secretary, Walter Marshall, who would outline in advance what his movements were, when he would be in Massachusetts, Florida, New York and Texas (659); "his coming here was always a matter of much rejoicing when we would get to him before his health got so bad" (660); we usually met in the hotel at Dallas and afterwards at Marlin; Mr. Wells, Mr. Corley and witness usually met him at the depot and getting away from him was a task; that continued from 1911 to 1917 or 1918, but after 1915 witness could see a change because of the concern he was giving his health (660); Green never made fun of Texas people; he had a private box in the polo grounds in New York and said when he invited a party of friends from the Chemical Bank to go to the polo grounds usually there would be some man in the party who would spring a business proposition on him sometimes in the most thrilling

part of the game (661); he never said or indicated that he had changed his Texas residence (662); his mail continued to be received at Terrell until he sold his Road and is occasionally received now (666); Green gave handsome gifts to witness and other friends (667); Green's apartment in Terrell was called the Green Flats; between 1894 and 1911, he made regular trips between Dallas and Terrell each year (668); witness has no recollection of ever having heard him refer to any other State than Texas as his residence (669); Green always seemed overjoyed to get back here; he always called Terrell, Tex., his residence up to the time of his death and never told witness any other place was his residence (670). On cross-examination by counsel for Florida, witness testified that the stock of the Texas Midland was owned by the Westminster Company from 1911 on—one-half by Hetty Green and one-half by Colonel Green and prior to that time by Hetty Green (675); that she sent her son down to look after her Railroad; he was then a young man in his early twenties and not experienced in railroad operations; that other than the loss of a leg in childhood he was energetic and healthy and very much interested in everything that pertained to the development, the building and extension of the short railroad and to the building up of traffic (676); he gave all of his time to it, acquired simple living quarters in Terrell, had no wife or household; later on, he acquired sleeping quarters in Dallas but had no wife while living there (677); in Dallas, he had an apartment—not an office; he never had an office in Dallas or any other town in Texas except Terrell (678); his secretary never lived with him in Dallas; the building in Dallas had been converted into an apartment; to the knowledge of witness, neither his mother, sister nor kinsfolk visited him while there (679); the demonstration farm, boll weevil, flower gardens and other activities were prompted almost completely by the desire to divert traffic on his Railroad (681); Green said to witness and others on many occasions that the basis of his experiments was that he could afford to experiment along untried ways that the ordinary man could not afford and that always the object was to point out the way by which better things might be done to help his fellow men (682); Green lived this life up to 1911 and kept in constant contact with his mother (683); the extensions of the Texas Midland were made from funds supplied by his mother or by the Westminster Company in the Green

ownership (684); in 1911, Green said his mother had asked him to devote more of his time to her welfare and he went back to New York and gave most of his time to her business (685); by 1911, the demonstration farm and flower gardens had been sold (686); but he was still interested in the production of oil in Texas and Oklahoma (687); after 1911, up to 1915, his usual movements were trips from the East to Texas twice a year—in the Spring to attend the directors' meeting and in the Fall for an inspection of the Railroad; the average stay on each trip was about two weeks; his time was spent between the Adolphus or old Oriental Hotel in Dallas and his private car (688); in 1915, the change occurred because of the development of highway competition which made the short-line railroad increasingly difficult to operate and his apprehension regarding his health (689); witness recommended that they engage in bus and truck operations over the competing highways but he finally indicated that his health would not permit him to experiment in new directions (692); the thing that was uppermost in Green's mind from 1920 was his own health (694-5); 1922 was the first year witness saw him after the Railroad was returned (695); he saw Green and his wife after their marriage on the yacht "United States" at Galveston (696-7); Green did not take his wife to any house in Texas that he owned after their marriage (697); witness engaged an apartment in the hotel in Marlin in 1922 for Green and his wife (699); the usual course of baths was thirty days and the arrangement he made for him was for that purpose; after finishing the baths, Green and his wife came to the Adolphus Hotel in Dallas, remained there not over a week and then went to New York (700); on that occasion when he arrived at Marlin he had to be lifted out of his private car and when he left he walked from the hotel to the depot (701); the next time he saw Green was in April, 1924, at Marlin (702); he made the arrangement at the hotel there for the period Green was to take the baths; Green's condition then was virtually the same as in 1922, he had to be assisted from the train, he could bend his knee, but had to be conveyed from the depot to the hotel in a wheel chair (703); Mrs. Green was with him and they went from there to the Adolphus Hotel, Dallas, staying not over a week (703); on this second visit to Marlin in 1924, witness tried to get Green to buy a home in Marlin; Green had him look at several houses there and report prices to him; Green

made no investigation himself (704-5); witness saw him again at Marlin in 1925 under the same circumstances; when he finished taking the baths he came to Dallas, spent a week at the Adolphus Hotel and then left Texas; witness met him on each trip under the same circumstances but is not sure about 1926; he saw him in 1927, when he spent two weeks or longer at Marlin and stayed not over a week at the hotel in Dallas (705-7); the next time he was in Texas was in 1935 but witness did not see him that year; that in 1929, he and his wife were guests of Green at South Dartmouth (708-9); this was in August; they spent one day, saw the airport, bathing beach and he was told by Green that there were large crowds there on occasions, and when he asked him why he had such a large house, he said he intended to make it a home for old couples; Green did not speak of his sister on that occasion but said the property had been in his family for several hundred years; the building had at least 25 rooms and looked like a small hotel—it was a tremendously large building (710-12). On cross-examination by counsel for Massachusetts, witness testified that he could not make a distinction between official headquarters and residence, but the railroad law of Texas requires certain officials, including the President, to maintain their headquarters at the point where the charter fixed the headquarters of the railroad; that Green may have had other reasons for so designating but that was the controlling reason (715-716); in 1910 or 1911, Green did not tell him "he was removing to New York" (717 and 726). The attention of witness was called to Mass. Ex. No. 13, a photostat of a letter from him to Green, dated Terrell, Texas, August 12, 1910, in which he used the expression "I dislike very much to write you on a personal matter so soon after your departure from Texas but due doubtless to your removal to New York," etc.; that this statement was based upon his lack of knowledge at that time of the cause of his removal (725). Witness identified Mass. Ex. No. 14, a letter dated New York, October 10, 1910, addressed to John Ringling and bearing no signature, in which it was stated, "Sorry I was not able to be with you in Dallas on October 2nd and 3rd. As I am going to spend most of my time in New York from now on, I hope to see you here. * * * President." in 1915, when he had a talk with Green, the latter said he would have to devote more attention to his health and less

attention to the various activities that he had previously followed in Texas—more attention to his health than anything else (729); Green had a rheumatic condition which was affecting his one remaining knee at that time; he was a very heavy man, weighing about 300 pounds, and when he was alone in his room he would hop about on his one leg without the use of an artificial limb, thus resting the entire weight of his body on his remaining leg (730); this ailment was progressing until the acute condition in 1921 at the Adolphus Hotel in Dallas; he not infrequently stated that he was devoting himself primarily to the pursuit of his health (731-2); at Green's request, witness investigated three resorts in Texas—Mineral Wells, San Antonio and Marlin—and recommended Marlin and was instructed by Green to make reservations; on January 19, 1922, he telegraphed Walter Marshall, Green's secretary, "All arrangements completed Arlington Hotel is best and quarters comfortable best bathhouse directly connected with Hotel under charge Doctor Buie graduate Vanderbilt average treatment two or three weeks will positively cure rheumatism special Hotel auto will meet train and car may be parked on convenient track" (733-5); it was about 1924, when he endeavored to persuade Green to purchase a house in Marlin; that it was at Mrs. Green's suggestion that he made inquiry for other quarters for him; they did not like the quarters at the hotel but the Colonel took no interest in it (737-8); had many conversations with Green and in several of them stressed that he ought to have a home in Marlin, that that would be the place for him to live (738-9); that Green did not state that he could not leave his interests in the East to reside so far away, what he said was that the trip was so long (740). In the conversation, he asked Green why he preferred the Texas resort to Hot Springs, Virginia, or Arkansas, and he said "there was too damn much publicity around Hot Springs, Arkansas" and that was why he chose the Texas resort as against the other (741); according to witness' present recollection, about 1910 or 1911, Green said "I have to go to New York and cannot carry out my earlier plans about extending the Midland—see if you can sell it;" that at the time of Green's visit to Galveston on his yacht "United States," after his marriage, the negotiations with the Southern Pacific was still in progress and witness escorted the President and

General Counsel of that Company on board the yacht for the discussion of an operating contract with Green (751); when witness visited South Dartmouth in August, 1929, Green showed him around the place and he saw the airport, radio development and the Goodyear Blimp and hangar, the slide for hydroplanes, the Marine radio compass for the direction of ships by radio, but saw no students (753-4); in his conversations with Green about Round Hill, the latter said the property had been in his family for several hundred years and he was also carrying on some farm experiments there; that that was his reason for locating there; that he does not recall in the conversation that he made any reference to his mother (756); that when he spoke of the home for aged couples, witness thought it might be "a dig at himself and Mrs. McKay" but did not know whether to believe him or not and did not take the remark seriously (755-757); that Green on several occasions showed him stamps and coins but never the complete collection; he generally had the latest ones he had acquired at Marlin (759); that at the Mardi gras in Dallas in 1900, Green was king of the carnival; that he told witness when he went into the greenhouse business he bought all the greenhouses in Dallas; he did things on a grandiose scale; when he bought the yacht, he bought a Great Lakes steamer and when he built a residence at South Dartmouth, he built a castle (760); after 1921, the only time Green used his President's car was sometimes when he would come over from Marlin to Dallas in it and on his inspection trips on the Texas Midland Road of two or three days (770). On cross-examination by counsel for New York, the witness further testified that in his negotiations for the lease of the Texas Midland, he sought to obtain a ninety-nine year lease (772).

Witness admitted testifying in the Circuit Court of Essex County, New York, in the matter of the probate of the Will of Green that the Colonel never discussed his legal residence or his home with him; that wherever Green was he used letterheads which had Terrell as his official headquarters; witness prepared, under Green's direction, many documents and affidavits in which his home or residence was stated—his official headquarters—as Terrell, Texas (782); "he cautioned me on all occasions to show Terrell—Terrell only—as his official headquarters" (783); Green's customary routine was to be in Texas twice a year but

witness could not say positively that he was there twice a year between 1915 and 1918 (785). On cross-examination by counsel for Mrs. Green, witness testified that in 1928 the Texas Midland was known as the largest cotton originating road in Texas per mile of track (788); the attempts to dispose of the Road had nothing to do with Green's physical whereabouts; he was reluctant to let the Railroad go; it was his pride (789-791). After giving some statistics regarding the price for which the Texas Midland was sold, its capitalization, loss, etc., witness testified that Green's private car acquired in 1896, was burned about 1907 and between those years he spent more time in his private car than any where else; that the car was mostly located at Terrell during those years (791); that prior to 1896, Green occupied the Green Flats and later the Dallas apartment, and about 1907, acquired the Commerce Street residence; he was then a single man (792); that Green always instructed him to give his residence or official headquarters as Terrell, Tex., and that witness can make no distinction between the expression "official headquarters" and "residence"—that one might mean the same as the other in our railroad language (794); that he never saw Green vote in Terrell. On redirect examination by counsel for Texas, the witness further testified that always in the Spring of the year Green would attend the directors' meeting at Terrell, in May, and inspect the Road at the same time; that there was no occasion for him to discuss Green's residence with him during the time he made the Railroad reports (796). Tex. Ex. No. 7 (799-805) gives the stockholders' and directors' meetings of the Texas Midland Railroad attended by Green as shown by the minutes between May 8, 1900 and May 8, 1934. The witness further testified that at the time he saw Green in Massachusetts, he manifested a great deal of interest in his ancestral home (806). Tex. Ex. No. 8, being a map of the Texas Midland Railroad, was identified by the witness and shows as names of the stations "Howland"—"Hetty"—"Harlow"—"Greenville," etc. (808). On recross-examination by counsel for Florida, witness further stated that Marshall, Green's secretary, had a daughter who was the wife of Dr. Glass, of the Buie Sanitarium at Marlin (808). On recross-examination by counsel for New York, witness said that his suggestion of the purchase of a home at Marlin was a permanent home (811). On further examination by counsel for Texas, the witness testified that

Green made frequent trips in John Ringling Brothers' cars to the West Coast and made one trip with them to Mexico (823).

Dr. N. D. Buie, of Marlin, Texas, testified that he conducts the baths, clinic and hospital connected with the hotel in which the mineral water coming from the wells in Marlin is used for the treatment of the sick; the clinic is separated from the baths and hospital and consists of various departments, with the usual equipment, and the hotel is connected by a tunnel with the baths; the clinic has a staff of twelve regular physicians and some others associated with it, and has facilities for the treatment of arthritis and kindred ailments (826-8); Colonel Green came to Marlin for the treatment of a rheumatic condition January 24, 1922, accompanied by Mrs. Green, Mrs. Stafford, Walter Marshall, his secretary, and his Swedish maid named Gerda (830-1); the record showed he was then 53, that his father had died at 87 and his mother at 82; that he had had pneumonia, malaria, influenza and an injury to the left knee, white swelling, from which he finally lost the leg; that the existing complaint or illness, rheumatism, dated back only six weeks and Dr. Pascal had diagnosed it as traumatic arthritis of the right knee, superimposed by focal infection in teeth and secondary anemia, with bleeding piles (831); at that time, Green was suffering from rheumatism, his movements were impeded because he had only one leg, he arrived in a wheel chair and walked on crutches with great difficulty (833); he remained about 94 days; the ordinary course of baths was 21 days but he remained for three months (834); from that visit witness became his physician, more or less, until the time of his death; Green made several visits to the clinic, was a very friendly man and unusually cultivated, they became fast friends; on a good many occasions witness visited him at South Dartmouth, Mass., and Miami, Fla. (835); on April 28, 1924, he came to Marlin for about 30 days; on April 27, 1925, May 6, 1926, April 19, 1927, and May 14, 1935, were the subsequent visits of about 30 days each; in 1935, his condition was very poor, his weight had gone to 144 pounds from 310; he claimed to have been six feet four inches tall; he was then pale, weak and had a lot of trouble with his heart and was a badly run down, emaciated man, degenerated in almost every way (837-8); in addi-

tion to much luggage and many trunks, when he came to Marlin he brought a great variety of stamps, coins, currency and business records (838); that witness saw him in Massachusetts on the occasions of his annual visit to the hospitals in New York City between 1922 and 1934—the last visit was December, 1934 (839-40); Green's itinerary was usually to go from Massachusetts to Florida the early part of January until the last few years of his life when he went a little earlier than usual; sometimes he would come to New York and stay a few days before going to Florida, would leave Florida when the weather began to get hot, along in April or May, come to Marlin or to Dallas, then to New York or Massachusetts (841); in the last few years of his life he would go directly to Marlin, going through Terrell, where he would meet his old associates (841); on the occasion of his last visit to Marlin he saw only McDonough, an old friend (842); witness' first visit to Florida was in 1925 or 1926; they lived aboard the house boat; it was before he had erected his house; witness made two visits with him on the boat before the house was finished; after the house was built, he visited there a number of times—the last time about 1931—always as Green's guest (843); he never saw the yacht "United States" but some of the linen, towels and china with "United States" on it were in his house at Round Hill (844); has heard Green speak of Mayor Ashley, of New Bedford, whom he admired a great deal, and he talked about his friends from Dallas and Terrell, all of whom were from Terrell except Mayor Ashley (845); Green was always greatly interested in the development of Texas and what he did politically; he talked about Texas a great deal and talked of his affection for it more than he did of any other place (846); he always took a great deal of pride in the fact that he was a member of the staff of Governor Colquitt and that he had given him the title of Colonel (848); he frequently discussed his participation in the organization of the Republicans in Texas and went a great deal into his activities in that regard and took great pride in them and seemed quite proud that he represented the State on the National Republican Committee (848); witness knew him from 1922 to 1935 and on all occasions when he visited him, Green stated he was a resident of Terrell and voted in Texas; he always claimed citizenship in Texas and said he voted and paid his toll taxes at Terrell until he was 60 years old (849-50); Green told him he stayed out of Massachusetts the first

half of the year because in some way it would make him a resident if he lived up there the first half of the year and he avoided the State for that purpose; witness further testified "I do not know that he told me that he did not want to be a resident of Massachusetts; he told me he stayed out of there to keep from being one" (851); he always referred to the place at South Dartmouth as the "Round Hill House" and to Star Island house "Forty-six Star Island;" "I do not know whether he ever referred to any particular place as 'home' and never designated 'Round Hill' as 'summer home'"; he went there from Marlin, Tex., because lots of times he complained of Marlin getting too hot and he was anxious to get up there on account of the heat (852); witness could answer definitely that he always enjoyed getting up there in the Summer time because of the difference in temperature over Florida, Texas and other places (853); on every occasion when he was with Green, they discussed his health and general condition; he seemed greatly concerned about his health; witness consulted with his New Bedford physician, Dr. Stern, and had a lot of correspondence with Green about what his doctors had said, where he had been, and also had correspondence regarding blood transfusions with Dr. Unger, the blood transfusion expert of New York City, and with his chief physician, Dr. Pascal, of New York (854); that Green was well acquainted with the nature of his physical ailments, interested himself in medical matters, was a great inquirer in medicine and wanted to know the mechanism of the treatment; that Green was a learned man in that respect, took a great deal of interest in his own condition and knew a lot about medicine (855); that after 1922, while he carried on some business he devoted most of his time to the pursuit of health; he was interested in the operation of his Railroad, knew where his bonds and business connections were and discussed them with witness (856); that Green telegraphed him that some of his physicians advised him to seek a high altitude and he was going to continue to visit Massachusetts in the Summer and Florida in the Winter; that warm weather and sunshine was considered beneficial for arthritis (857); that Green referred to himself as a "Texan" on more than one occasion (858). Witness identified Tex. Ex. No. 9 (861) from Green, South Dartmouth, Mass., dated October 25, 1935, addressed to him at Marlin, Tex., in which he sent him a button and card regarding the "Recruits of 1936" "I hesi-

tate to send you this button, but, being an old Texan and thinking the matter over carefully, I remembered what my old friend David Crockett said: 'Be sure you're right, then go ahead.' I have always had a great deal of respect for your good judgment, so I am sending this button and card to you'' (862).

Green told witness how he had lost his left leg; that he had a chronic bone disease and his mother carried him to various celebrated physicians and resorts; when he was twenty-one, his mother gave him a million dollars and told him he was his own man and she would not have anything further to do with his treatment other than to wish him well and let him run it to suit himself; that Green had Dr. McBurney, a famous general surgeon of New York, cut off his leg at the age of twenty-one or soon after; that he cut it off a second time when he was living down on lower Fifth Avenue in New York City; he told witness that he was on his crutches one snowy day and some big fellow or boy jumped up on his back and shoved his stump down into the ice and snow on the sidewalk, giving him a terrible injury, and McBurney cut it off the second time near the hip; that he joked a great deal and encouraged many stories about it being done cheaper or for less money, but that this was the true story of the amputation of his leg given to witness by the Colonel himself (868-9); one of the houses at South Dartmouth was pointed out to witness as the home of some of Green's people and on one occasion in New Bedford, a stone house was shown him by Green as having been lived in by his people (869-870); Green said on several occasions that he was greatly touched by the fact that in various parts of the Country provision had been made for old ladies' homes or veterans' homes where old couples were separated and he intended that the South Dartmouth house would be used as a home for old men and old ladies where they could spend their days together (871); Green said his mother was very religious, believed in the Bible verbatim, and thought it sinful to keep the body out of the ground after death and requested that she be not embalmed or put in a permanent casket but be placed in the grave immediately after death; that in order to ship the remains to Bellows Falls from New York they had to put the body in a metal casket, hermetically sealed, and upon arrival at Bellows Falls, the expensive casket was exchanged for a cheap pine coffin (872); witness understands that Green as well as his mother and father are

buried at Bellows Falls, Vermont, and that Green was born in London, England (873); that Green was interested in the Texas Centennial Coin and bought a large number; also in the issuance of a postage stamp to commemorate the Centennial of Texas' Independence in 1936 and wanted witness to have his brother-in-law, Senator Connally, take it up with the Post Office Department (875-5-6). Witness identified Tex. Ex. No. 10, a telegram from South Dartmouth, Mass., October 29, 1930, from Green to witness, reading "Sorry I am not able to comply with your wonderful request. Dr. Pascal insists that I go to a high altitude. Had planned to go to Lake Placid but on account of condition have changed to Asheville. No car. Dr. Pascal claims that as he has gotten rid of my rheumatism I must now keep away from low altitudes that is if I want to be able to visit Florida in the extreme cold weather and Roundhill in the Summer as I must build up my blood and do nothing to thin it. If it were left to me I don't know of anything I had rather do than make you a visit as I have always had very pleasant trips to Marlin (878).

He also identified Tex. Ex. No. 12 from the Lake Placid Club, New York, October 24, 1932, from Green to witness, in which he said "My health is much better now than it has been for the past month or six weeks and, under instructions of Dr. Pascal, I have come up here to see what this brisk mountain air will do for me" (883).

Witness also identified Tex. Ex. No. 13, a letter to witness from Green, Star Island, Miami Beach, Florida, January 23, 1935, reading, "In reply to your letter of December 29th, will say that I went under treatment of two doctors in Miami—Drs. C. F. Roach and Walter Hotchkiss, of which you are probably aware. There is a good deal of anemia in Florida and these fellows have a good reputation in bringing them back. They have been giving me Lederle Solution Liver Extract, 3 cc size. At first they gave it to me in the shoulder by injection, which produced a reaction of severe rheumatic trouble in the joints of my hands. Then they gave me some kind of salicylate for the rheumatism caused by the reaction, which went down almost immediately. Then they commenced giving me the liver by mouth once a day in orange juice and there was considerable improvement. On the attached sheets you will find the result of the blood tests from December 29th to January 18th. My attending physician has been treating Dr. Unger's

brother-in-law here in Miami Beach. I am getting better and have started going out driving again and I think the pleasant weather down here has helped me a little. Dr. Roche says he thinks if I keep up this treatment about two weeks longer I will be out of the anemic class. Thanking you very much for your interest and regretting that I was not able to let you know about my condition sooner'' (885-6).

Also Tex. Ex. No. 14, telegram from Green, Miami Beach, Fla., to witness, Marlin, Tex., May 6, 1935, reading ''Will arrive Tuesday fourteenth two thirty two a.m. Will remain in car until eight a. m. In party there will be Mrs. Green and I, Miss Hodges, day nurse, night nurse, secretary and Stella'' (887-888); that Green had a boat called the ''Isola Stella'' which witness understood to mean ''Lone Star'' (889). On cross-examination by counsel for Florida, witness testified that he first met Green when he came to his clinic as a patient January 24, 1922 (890); his general condition then was pretty good, although he was suffering from rheumatism but improved a great deal (891); he next saw him in his private car at Ennis, Tex. the next year; he was still suffering from rheumatism (893); in 1924, when he saw him at Marlin, he was still having trouble with his rheumatic condition but was a little better (895); he again saw him at his sanitarium in 1925—still rheumatic (896); again in 1926, when he began to show deterioration fast, weakness, loss of weight, which kept on to the end of his life (898); the next and last visit was the Spring of 1927, he was still sick, complaining of rheumatism and there was evidence of diabetes (899-900); did not see him in Texas again until 1935, when he stayed about a month; he showed marked deterioration and loss of weight, high blood pressure, anemia, difficulty in moving around and no appetite (901). Witness identified Fla. Ex. No. 1 from Mabel H. Green, South Dartmouth, Mass., June 22, 1935, to witness (904), in which Mrs. Green said among other things, ''We arrived here safely last Tuesday evening and found it very cool. We have steam on in the house and was glad to have steamer robes when they met us at the train. We had a very comfortable trip home, except Monday, which was very hot. The Colonel is feeling fine and the day after we arrived he went up town and has been going every day since. So far as I know, he has comfortable nights. He can sleep well

because it is cool. We enjoyed our stay in Marlin and hope to get down again next year, but that is too far ahead to make plans. If Roosevelt socks the rich, we may not be able to go."

Witness never saw Green after that; according to witness' recollection he always came to Marlin from Florida, except the first time from New York (905-6); the South Dartmouth house was comfortable and well appointed, had provision for many servants, two dining rooms, a breakfast room, etc.; they tried to make it like an English gentleman's home where he was able to keep up a large number of servants and butlers such as a rich man would be able to do (910-11); Green never said what his object was in building it but stated his object with reference to disposing of it as a home for old people to live together (911-12); Green did not mention it as a memorial to his mother; witness saw the "Charles W. Morgan," a Whale Boat Shrine, and some shops, as well as some people from the Institute of Technology (912-13); Green had a bathing beach and broadcasting arrangement, and the grounds were open to the public (914); witness spent about one week with Green on his house boat in Florida in the Spring of 1926 (915) and again in 1927; in 1931, he visited him at 46 Star Island (917), Mrs. Green was there; it was a lovely place, with a large lobby on the ground floor, dining rooms, butlers' quarters, steward's office, Green's private office with moving pictures at one end, large stairway with a mezzanine, guest rooms on the second floor, with grounds covering a good deal of frontage on Biscayne Bay, where there was a wharf and Venetian landing (918); the Island is artificial and it is a section of wealthy homes; the grounds were well laid out, had a large number of palms transplanted from the Everglades and many shrubs; the house was beautifully and lavishly furnished (919). On cross-examination by counsel for Massachusetts, witness identified Mass. Exs. Nos. 19 and 20, the first a telegram from witness to Green at the Waldorf, New York City, June 6, 1927, reading, "Please let me know how you are feeling. How you stood the trip home. Would like to hear from you in a general way how everything is with you. Best regards to yourself and entire family from all of us", and the reply from Green to witness, New York, June 8, 1927, reading, "We all stood the trip well but all caught cold on arriving in New York;

however, the weather has now changed and everybody seems to be on the improve" (926); that the record of Green's case May 14, 1935, gives the address "South Dartmouth, Massachusetts" (929), and on May 6, 1926, the address in the record is "Round Hills, South Dartmouth, Massachusetts"; that Green stated he wanted to avoid Massachusetts on account of not wanting to be a resident of the State and did not want to be taxed in that State; that witness is pretty sure Green said to him that it was on account of all things that entered into residence in that State, including not only being a citizen but paying taxes there; that he is not undertaking to quote his words but that is his best recollection; that he did tell him that was his reason for remaining out of Massachusetts for six months of the year —not for taxes—but general residence there and tax matters too (942); that for some reason he did not want to be considered a resident of the State of Massachusetts; the reason for that was he thought he was a resident of the State of Texas and that he could not be a resident of too many States, but only one; he always claimed to be a resident of the State of Texas and tried to preserve that (943); that witness does not believe business entered into it but thinks he always believed and thought that he was a resident, a legal resident, of this State (Texas); that he never said anything in regard to the question of taxation with reference to his residence in Terrell or that it had anything to do with his Railroad headquarters there; witness understood his residence in Texas was considered by him just like witness considers himself a resident of Texas (944); that Green always said the laws of Florida encouraged rich men to go there and have their Winter homes there because they did not make citizens of them or they did not have to become citizens or were not claimed as citizens of that State, and that State was inviting him to go there and invest his money; that he does not recall any mention of taxes in this connection (945); that Green stated the Florida laws were such as to encourage millionaires to go there because they were considered non-residents (946); that he never told him in any of his conversations that Texas was a lenient State in tax matters (946).

Witness identified Mass. Ex. No. 21, a telegram dated October 25, 1930, to Green, South Dartmouth, Mass., from the witness and Dr. Glass (948-9), reading, "We have

learned that you are planning a trip to Lake Placid for a little rest and change of environment and building up. We are all concerned about your health and welfare. Therefore we are wiring you at this time to urge you to come to Marlin and stay with us until time for you to go to your place in Florida after Christmas. We can fix you up a whole floor in the new hotel and let you have service and attendants as you desire and you can bring one of your chefs along to superintend your meals. You can take the baths as often as you feel like it. You would be surprised how easy it is to go from the new hotel through the Marble Subway to your bath without any exposure or exertion. You will live in perfect safety in a modern fireproof hotel with every comfort and convenience offered by the best hotels every where. We can give you the entire use of the eighth floor for your offices and living quarters. There are sixteen rooms including four suites, all of which can be converted to any sort of arrangement desirable for giving you and Mrs. Green all the comfort you could care for. We are having marvelous weather of an Indian Summer nature, and with this arrangement weather changes would have no effect on your comfort and your routine. We are tremendously anxious for you to come and will be most delighted to have everything ready for you on one days notice. You can have as many of your friends visit you or as few as you like or nobody at all if you desire. A new Lincoln car will be put at your disposal for as much driving as you care to take and you can bring George along for this. We feel that this will do you more good than any other thing that could possibly be offered to you and know that you will be delighted with the accommodations at this time. Awaiting your pleasure and hoping that you will give this proposition your earnest consideration, we remain yours sincerely." To this telegram, Green replied October 29, 1930, "Sorry I am not able to comply with your wonderful request" (950); that witness did not send Green telegrams or letters every year urging him to come to Marlin, but when the new hotel was opened in 1930, they undertook to describe to him the safety of the accommodations, luxurious apartments and that it was not subject to the fire hazards of the old Arlington Hotel; that the first visit was made because Mr. McKay made the arrangements for him (951); that on several occasions witness sent both letters and telegrams urg-

ing him to come because he felt Green depended on him for his health; that he went to see him in South Dartmouth and urged it on him after consultation with his doctors (952); that about 1927 Green began to "sort of give up the fight" and on the visit of witness to Miami Beach in 1931, he said he was coming to Marlin but changed his mind and went to Lake Placid (953). Witness identified Mass. Ex. No. 22, March 17, 1931, being a telegram from witness to Green at Star Island urging him to come to Marlin. He also identified Mass. Ex. No. 23, telegram dated July 26, 1928, from the witness to Green reading, "We would be much complimented to have you join us in some way in identifying yourself with our new hotel project. There are 125000 dollars common stock 75000 dollars preferred stock and 240000 dollars first mortgage bonds. They only asked us to buy 65000 dollars preferred stock which we are rapidly taking up. We thought perhaps you would not object to taking 10 or 15 thousand of the preferred stock. We further want to get suggestions from you or your architect for the construction of special apartments in this hotel for your exclusive occupancy as you have in the Waldorf and nobody else use them. They are using all the lots across from the clinic for the project. The entire things will cost about 400 thousand dollars and will give us 109 rooms. Hospital on top floor. They connect with the clinic and bath via subway under the street. It is of Spanish architecture and design and will make a beautiful building. They are calling it the Buie Hotel but I would be very pleased to see it name- The Green Buie Hotel. We would be glad to hear from you in the matter. Best regards" (958-9).

On cross-examination by counsel for New York, witness stated that Green said he wanted to be fair with his taxes and made a great effort to be honest and square with his taxes (962); he spoke of one of his relatives having been born in the New Bedford house but witness could not say positively that he said it was his mother (963); that the address given in the Marlin Clinic case record of Colonel Green bearing date April 28, 1924, is "New York City" and the case record for Mrs. E. H. R. Green, January 25, 1932, shows "Waldorf-Astoria, New York City" as the address; that Green's case record for May 6, 1926, shows Dr. Pascal, of New York, as the family physician (963-4); that witness visited the doctor at his office in New York City (965); in

reference to hurting his leg after it had been amputated the first time, Green said he was standing on lower Fifth Avenue, New York, "where he lived" when somebody knocked him down in the snow and hurt his leg (965); that witness saw the coin and stamp collections at Miami Beach, Fla., and also at Marlin on several occasions between 1922 and 1935 but cannot say that the collections were identical; that these were among Green's greatest interests and he was fascinated by collecting unusual currency, such as bills accidentally printed "20" on one side and "10" on the other—he would collect those things where he could find them and spend almost every evening doing something with stamps (967); he had a large number of rare and valuable stamps and spent his time picking up stamps and putting them in the stamp books; he kept up with these things through the information the stamp collectors got and by knowing a little more about stamps than the ordinary people; that he knew all the stamps of any value throughout the world (968); that Green was inclined to get fascinated with certain things and then his interest in it would die out; he was with witness at the time of the Lindbergh flight and he became interested in aviation and built an airport at South Dartmouth; when the radio came in, he built a radio station at South Dartmouth and did some broadcasting but finally lost his interest and turned it over to the Institute of Technology in Boston; that he did not keep his interest in many things as he did in stamps; he had an interest in collecting rare currency, coins and stamps; he had a large ring given to him by Diamond Jim Brady, of New York City, who was a personal friend (971-2); witness never visited Green in New York City; that the residence at Star Island was one of the finest there (974).

On cross-examination by counsel for Mrs. Green, witness testified that she always came to Marlin with Colonel Green and would bring her maid and he would have a maid, a nurse and his secretary (979); that a common saying of Green's on many occasions was that he was by birth an Englishman, by education a Catholic, raised a Quaker, in business a Jew and by residence a Texan (979); that on many occasions he stated he took real pride in the State of Texas and his connection with it (979).

On redirect examination by counsel for Texas, witness testified that the case record for 1927 shows no address;

the one in 1922 and another in 1929 give no address; that a case history, without date, shows the address "Terrell, Texas"; that these records are made by the history taker or doctor assigned to records and some of them by the laboratory people (981); that he and Green exchanged gifts; he sent witness presents of jewelry, clocks, radios, etc. and witness would send him something unusual from the farm; there was nothing witness could buy which would attract him but he was always glad to get any of the products of the soil in Texas (984). On recross-examination by counsel for Florida, witness said Green was one of the best posted men he ever knew, carefully looked after his business affairs, discussed with witness his care in having his tax matters properly made out by experts so he could give a proper rendering to the Government in order to be fair; "I think he had uppermost in his mind that he did not want to be a citizen of three or four States at one time" (987); it was Green's opinion that citizenship in any State brought on the tax matters connected with that sort of citizenship under the laws of that particular State and witness is sure he thought about the laws of the different States in regard to their taxes; that Green went to Florida with a feeling of liberty because he had the information that Florida would not make him a citizen and not bring to bear on him the tax affairs that citizenship in that State would bring (988); that he told witness he studiously avoided going into Massachusetts at any time during the first six months of the year because it would subject him to the taxation and citizenship of Massachusetts (988).

On recross-examination by counsel for New York, the witness testified that the case history at the clinic is made from personal consultation with and statements made by the patient and personal examination (989); that the case history on Green dated January 24, 1922, reading "Doctor Pascal diagnosed traumatic arthritis, right knee, superimposed by focal infection from teeth and secondary anemia and bleeding piles" (991).

Raymond Barnett, of Marlin, Texas, testified that he first met Green about 1922 in the lobby of the Arlington Hotel in Marlin (997); that he was then a reporter on the Marlin

Democrat and had an interview with Green in which he asked him if he was going to support "Gooseneck Bill" as leader of the Black and Tan faction of the Republican Party against the Lily White faction led by Creager and Green told him he was more interested at that time in getting rid of his rheumatism than he was in politics (999); that he saw him again in 1924 and discussed local politics (1000) and when he asked him when he was coming back to Texas he said, "I am coming back to vote" (1001); that he saw him on his last visit to Marlin and found him lying in the bath room and looked "rather wasted"; that he asked him how he was getting along and he replied, "Well I am glad to be back home" (1002); that in a conversation about investing in Marlin, Green said he thought Texas as a whole was going to have a great growth and development and "he was proud of the fact that he was a Texan" (1004).

A. B. Johnson, of Marlin, Texas, testified that he is a native Texan and postmaster of Marlin; that he met Green in 1922 (1008); that he was manager of the bath house in which he bathed; that Green was there about 90 days in 1922; he saw him frequently then and again in 1924 in Marlin; he stayed there about a month on that occasion and again in 1925, '26, '27 and '35, when he made visits of approximately the same length (1010); that Green said he did not like to live in New York because it was so congested and he was so badly crippled up it was hard for him to get around—this was in 1925 (1013-14).

Garland Adair, of Austin, Texas, Editor of the Austin Dispatch, testified that he was a native of Texas, formerly a resident of Kaufman County, Texas (1016); that he was Chairman of the American Legion Committee of the Texas Centennial Commission in 1933 and the purpose of the Organization was to get a Centennial Coin passed through Congress to be sold to raise funds to build a memorial museum in Texas (1019); that they developed a Texas Centennial Seal to be sold to raise money and solicited a subscription from Green (1020-23); that he sent him Tex. Ex.

No. 15, dated November 22, 1933, enclosing a check for $100 for 20,000 of the stamps and offering to purchase a supply of the half dollars (1023); that Green was appointed a member of the Texas State Memorial Museum Commission and offered to assist in the campaign (Tex. Ex. 16—1027). Witness identified Tex. Ex. No. 17, Green's letter dated October 29, 1934, ordering 1,000 Texas Centennial Half Dollars to be sent—250 to Miami Beach First National Bank; 250 to the First National Bank, New Bedford, Mass. and 500 to the Chase National Bank, New York City (1034-6); he also identified Tex. Ex. No. 18 "A Certificate of Distinguished Service to Texas," with his letter of January 10, 1935, addressed to Green at Miami Beach, Fla., containing the postscript "In the event you prefer that the certificate should have given your residence as New York or Florida, please let me know and we will send in another" (1040), and also Tex. Ex. No. 18-A, a letter from Green to witness, stating "I desire to thank very sincerely yourself and the other gentlemen who conferred this honor upon me, and I assure you that it is greatly appreciated. However, I note that my residence is shown as Massachusetts. This is not correct, as I have never changed my legal residence from Terrell, Texas, and if it is not too much trouble, I would thank you to make the change. I am returning the Certificate under separate cover" (1043); that Green's request was complied with and Tex. Ex. No. 18-B sent him under date of January 23, 1935, stating the change would be made and "We have received your letter and the certificate and are very happy indeed to change same in accordance with your legal residence and your wishes. We say we are delighted and that is truly our feeling, for we are happy to continue to claim you as a citizen of Texas" (1045). The witness identified Tex. Ex. No. 19 as the corrected Certificate (1046-7), in which it was recited, "Certificate of Distinguished Service to Texas by Col. E. H. R. Green of Terrell, Texas, who purchased at Austin, Texas, the first Thousand Texas Centennial Half Dollar, commemorative, in 1936, of the Independence of Texas" (1047).

Counsel for Texas gave in evidence the correspondence with Governor Colquitt and Colonel Green November 10, 1910 to November 14, 1910, appointing Green Colonel on the Governor's Military Staff (Tex. Exs. Nos. 20, 21, 22—pp. 1057-60).

EDWIN J. KIEST, of Dallas, Texas, testified that he was the owner and publisher of the Dallas Times-Herald (1061-3); that he became an intimate friend of Green's about 1903-4 when the automobile was introduced into Texas; that Green brought the first one and witness the second or third (1064); that Green lived at Elm and Griffith Streets, Dallas (1065); that Green, witness and others organized the Automobile Club and Green made witness Director of the Texas Midland Railroad (1067); that he accompanied Green on inspection trips; that the annual meetings were held in his private car at Terrell because of his crippled condition (1069-70); that Green tried to have the best Railroad in the United States for the size; that all of his box cars were painted green; that he was the first to use electric headlights, etc. (1071); that he was active in the management and always trying to make improvements (1072); that he had the first experimental farm in Texas such as are now conducted under the auspices of the Agricultural and Mechanical Colleges (1072); that Green became interested in the Texas State Fair Association, of which witness was President (1074); that Green placed the first order with the Wright Brothers for an airplane and bore one-half of the expense of a lighter-than-air machine at the Texas State Fair and organized the first automobile race held in Texas (1075-6); that he and witness were very close friends and their friendship continued until his death (1079); that Green thought Texas had great possibilities, loved the State and its people; "he liked it down here because he could be himself with what he called his 'bunch'—he relaxed" (1079-80); that his mother became ill and began calling for him about 1911-12 and she died in 1916; that Green made periodical trips to New York and came back to Texas; he said his mother wanted him and he had to go (1082-3); in November, 1917, after his marriage, witness and others visited him on the yacht "United States" at Galveston (1086); that witness went with him to the Customs House, where he registered the boat as from Galveston (1087). Counsel for Texas offered Tex. Ex. No. 23, being a Consolidated Enrollment and Yacht License dated November 17, 1917, issued to the steam yacht "United States" at Galveston, Texas; Permanent Yacht Enrollment No. 1 reciting that E. H. R. Green, of Terrell, Texas, having taken and subscribed the required oath and sworn that "he was the sole owner of the vessel called the 'United States', of Galveston, Texas, etc." (1088-

1090); which certificate contained an endorsement thereon that it was issued at the Port of Galveston, Texas, November 17, 1917, surrendered New York, N. Y., June 16, 1923, because "ownership district and occupation changed" (1095), and the further endorsement that it was renewed for one year from March 24, 1919, at "Port of New Bedford, Massachusetts" (1096). The witness further testified regarding a visit to Green at South Dartmouth after his illness at the Adolphus Hotel in 1921 and described a run on the Security National Bank of Dallas in May, 1921, when Green deposited $100,000 in the Bank in which he had no interest (1109-12); that Green was never the same after his illness in the Adolphus Hotel in 1921 (1112); that his health was poor and his principal pursuits were matters connected with the estate (1114); that in a discussion with Green about the Round Hill House he said it was a shame to separate old people who had lived together fifty years and he had a notion to make an old folk's home out of the Round Hill House so that they could remain together, and again when he was at Marlin, he discussed the building and endowing of a sanitarium there for poor people (1115); that Green always claimed Terrell, Texas, as his home; when witness asked him why he signed Terrell and why he didn't advertise Dallas a little he said, "Terrell is my home—that is where I belong" (1118); that he saw him the last time in Dallas in 1935, in his private car, and talked Dallas affairs and politics and witness was surprised a little that he was so much interested in it on account of his physical condition (1120); that in the Spring of 1921, witness presented Green, who was much interested in coins and stamps, with a gold coin given to him by President Obregon, of Mexico (1124); that after his 1921 illness, witness visited him at his Star Island home about 1927 (1132), and at the Waldorf-Astoria in New York and his office (1133).

Counsel for Texas gave in evidence Tex. Ex. No. 25, being the commission from Colquitt to Lt. Colonel E. H. R. Green as a member of his staff, dated February 4, 1911 (1136-37).

Said witness further testified that after witness' visits to him in South Dartmouth and Miami, Green did not become much interested in anything; his health was the main thing he was worrying about; he wanted to go wherever he could for the benefit of his health and he was doing everything he could to benefit it (1140). On cross-examination by counsel for Florida, witness testified that Green was using the

experimental farm to find some means of getting rid of the boll weevil which was destroying the cotton in which his Railroad was interested (1148); he was also interested in the breeding of chickens (1149) and later in flowers, especially roses (1150); that prior to 1911, he was a Director in the American Exchange National Bank of Dallas (1152); that the Elm and Griffith Street building was a three-story plain brick building with some stores below; Green was sleeping there and had servants there and stayed there until he built the place on Commerce Street (1156); that this latter building was on the edge of the business section of Dallas; that he built it as a home, he had a billard room, bed rooms, pianos and organs and the building looked like the brown stone fronts up in the East (1157-58); that there was no yard or shrubbery; he had servants and a housekeeper there (1159); that Green continued to live in this place in Dallas until 1911 or 1912, when his mother called for him and he went to New York coming back occasionally (1160); that about two or three years after he went up there, he abandoned coming back (1161); that after selling this Commerce Street place to the City he did not re-establish any home in Dallas, he stopped at the Adolphus Hotel (1162); that is where the witness lives—that is my home (1163); that from the time witness knew Green when he lived in this Elm Street property he spent most of his time in Dallas (1164); that Green would not always use his private car in going to Terrell; he would go there in the early morning and come back and sleep in Dallas, doing this three or four times a week (1165); that the place where he spent most of his time, ate his meals, etc., was Dallas; Green was a Director in the American National Bank of Terrell and a Director in the American Exchange Bank of Dallas (1166); he had an interest in the Majestic Theater in Dallas which was burned and not rebuilt (1167); that his various properties were sold after 1911 (1168-69); about 1910, witness and Green went to Florida to the races, stopping at Daytona three or four days (1171-2); after 1911, Green would come back to Texas and stay two or three weeks, go back and stay three or four months—in the Spring to attend the stockholders' and directors' meetings and in the Fall for the election; after his mother's death he didn't come as frequently as before (1175-7); between 1915 and 1922, he would come three or four times a year and thereafter about two months a year down to Marlin (1179); after 1915, but more

especially after 1921, his main object in life was to try to find health (1181); that witness' visit to the Star Island house was in 1927—Dr. Buie was there but stayed only a day or two (1187); the house was in a rather exclusive section on an Island with several other houses, was elaborately and comfortably furnished and Green's wife and servants were there (1188-89); that there was no flying field, machine shops or public bathing beach there but he had a house boat and two ocean-going launches (1190).

On cross-examination by counsel for Massachusetts, the witness testified that about 1919 he sent Green at New York a painting of a Texas scene by a Texas artist for a Christmas present (1190-1201); in his letter of December 9, 1919, witness said, "As you are building a handsome home at New Bedford naturally you will decorate its walls with paintings, and I thought probably you and Mrs. Green would like to have a little reminder of Texas in your new home—hence my little Christmas gift has taken this shape (1203) (Mass. Ex. No. 24); that at the time the painting was sent, witness understood Colonel and Mrs. Green were going to live in the South Dartmouth house and not that it was to be a home for old couples—that came later (1219); that all witness then had as a basis for his letter was the talks with Green (1219).

Witness identified Mass. Ex. No. 26, a letter to Green, January 1, 1920, in which he stated, "About the middle of December I expressed to you prepaid a package containing an oil painting by Julian Onderdonk, a Texas artist with a national reputation, the painting is of a Texas scene and it occurred to me that in your new home there might be a nook where a scene from this state, where your *true* friends reside, could hang as a sort of reminder of said friends left behind when you again took up your duties in New York. I trust the painting reached you in time and in good order." (1222). The witness further testified that he remembers that Green said he was building on a piece of land in New Bedford which had been in his family—the Howland family—for 200 years (1223). The witness admitted receiving Mass. Ex. No. 27, a letter from Green, dated January 5, 1919, (evidently 1920) acknowledging the receipt of the painting, in which he said, "Mrs. Green appreciates the painting of the 'Blooming Cactus' as much as I do and we want to assure you that it will be hung in our new home at 'Round Hills', South Dartmouth" (1227); that on his visit

to Green at South Dartmouth, he pointed out a stone building in New Bedford in which he said his mother was born (1247), showed him a warehouse in which his forefathers used to store whale oil, and a blacksmith shop that he had moved to Round Hills (1248); that witness went through the "Charles W. Morgan" while Green waited in his car (1249); witness can only remember that he referred to the ground at Round Hills as having been in his family for hundreds of years (1250); when witness was there in 1924, he saw no aviation field; that the new thing Green wanted to talk about was the radio station (1251); that there was a beautifully bound library of books at South Dartmouth.

On cross-examination by counsel for New York, the witness further testified that Green never discussed with him the payment of personal income taxes but told him he filed his income tax at Terrell, Texas; that his usual routine started at South Dartmouth, from there he went to New York, usually in the month of December, then to Miami for the first of the year, then to Marlin and Dallas and then East again to New York or South Dartmouth; that when he became so crippled he could not move he stopped coming to Marlin (1269); that he saw Green in New York the last time in the Spring of 1917, when he visited his apartment there at the Waldorf-Astoria (1276); Green told him that his mother and sister had gone in with him one-third each in the floral business (1282); that witness testified before the Commissioner in the matter of the probate of the Will of Green in the Surrogate's Court of Essex County that Green had told him on numerous occasions that his legal residence was Terrell and when introduced to friends, Green would say "I am from Terrell, Texas" (1288).

J. W. Royall, of Dallas, Texas, an officer of the Republic National Bank of Dallas, testified that in 1921 he was connected with the Security National Bank when they had a run and saw Colonel Green (1304-5); the latter came to the Bank with Mr. Kiest, Mr. Reardon and Mr. Colquitt when the Bank was jammed with people withdrawing funds (1306); Green made out, signed and deposited a check to his credit in the Security National Bank for $100,000 (Tex. Ex. No. 30, dated May 11, 1921; 1307-1311); that Judge Ramsey, of the Federal Reserve Board of Dallas, made a

speech and Green followed him with a speech in which he stated that he was a citizen of the State of Texas, very much interested in Texas and he thought they were doing a very foolish thing to finish the run, inasmuch as he knew the Bank would remain open if the run was not finished, and as confidence and evidence of his faith in the Bank he had just deposited $100,000, and waved a duplicate deposit slip in his hand (1308).

On cross-examination by counsel for Massachusetts, the witness stated he was not trying to quote Green but stating the inference he drew from what he said.

On redirect examination by counsel for Texas, witness testified he did not recall Green's exact words (1314), but in his talk he gave the impression to everybody that he was a resident of Texas, interested in Texas and that the failure of this Bank would cause injury to many sections of Texas and he did not want that thing to occur (1315).

At the hearing at Fort Worth, Texas, commencing October 19, 1937, counsel for New York gave in evidence N. Y. Ex. No. 5, on the letterhead of the Green Floral Company, Dallas, Texas, July 11, 1911, addressed to Green enclosing a bill of lading covering a shipment of household goods and enclosing a list of the goods loaded in the cars which went forward July 8, 1911 (1324-1327).

Counsel for Texas gave in evidence Tex. Ex. No. 31, Treasury Department Certificate and photostat copy of Federal Income Tax Return for 1918 of Edward H. R. Green, "of Terrell, Kaufman County, Texas," from the files of the Treasury Department, bearing the signature of Green and sworn to by him before a Notary Public (1333-4).

Also the following Texas Exhibits:

Tex. Ex. No. 31-A,	a similar Certificate and Return for the year	1919
Tex. Ex. No. 31-B,	" " " " " " giving the same address	(1335-6)
Tex. Ex. No. 31-C,	" " " " " "	1920 (1336-7)
Tex. Ex. No. 31-D,	" " " " " "	1921 (1338-9)
Tex. Ex. No. 31-E,	" " " " " "	1922 (1340-1)
Tex. Ex. No. 31-F,	" " " " " "	1923 (1342-3)
		1924 (1344-5)

Tex. Ex. No. 31–G,	a similar Certificate and Return for the year giving the same address	1925	(1346–7)
Tex. Ex. No. 31–H,	" " " " " "	1926	(1348–9)
Tex. Ex. No. 31–I,	" " " " " "	1927	(1349–50)
Tex. Ex. No. 31–J,	" " " " " "	1928	(1350–1)
Tex. Ex. No. 31–K,	" " " " " "	1929	(1353–4)
Tex. Ex. No. 31–L,	" " " " " "	1930	(1355–6)
Tex. Ex. No. 31–M,	" " " " " "	1931	(1356–7)
Tex. Ex. No. 31–N,	" " " " " "	1932	(1359–60)
Tex. Ex. No. 31–O,	" " " " " "	1933	(1360–1)
Tex. Ex. No. 31–P,	" " " " " "	1934	(1362–3)
	(and attached list of various Companies from which dividends were received 1364–70)		
Tex. Ex. No. 31–Q,	a similar Certificate and Return for the year giving the same address (and similar schedule of dividends 1372–78)	1935	(1370–2)

Sommerfield Griffith Edwards, of Terrell, Texas, testified that he was in the retail lumber business, knew Green, and in 1904 sold him lumber for the chicken houses and demonstration farm near Terrell (1381-2); also sold lumber for the Green demonstration farm in 1905 and for the Green Floral Company in 1906 (1382); that Terrell is divided into three election wards and witness' office is in Ward 3; that the State and National Elections in Ward 3 for 29 years have been held in witness' office; that he has been judge of elections several times; has seen Green vote there a number of times at State and National Elections; never heard his right to vote disputed (1382-3). On cross-examination by counsel for Florida, the witness testified that he saw Green the last time in 1927, in his private car, at the foot of Moore Avenue and thinks this was the last time he saw him vote (1384).

On cross-examination by counsel for Massachusetts, the witness admitted that in his deposition in the litigation between Mrs. Green and Mrs. Wilks in New York he had testified that he could not remember whether Green voted in 1911 (1385); that Ward 3 where he voted is in the ward where his private car usually was on the railroad track.

An affidavit of the witness made November 7, 1916, (Mass. Ex. No. 33) was given in evidence (1388), in which he stated that he served as one of the election judges at the General Election in Kaufman County, Texas, Voting Box No. 15, and that at the General Elections in the years 1910, 1912 and 1914, Colonel Green, of Terrell, Texas, was a qualified voter and voted at said Box in said Elections (1389); that during those years the practice was for the man who wanted to vote to go to the ballot box with his poll tax receipt which was stamped by the election officer (1391); that if they did not have the poll tax receipt they would sign an affidavit that they had misplaced or lost it (1392).

(Mass. Ex. No. 34, Poll Tax Receipts issued in Terrell, Kaufman County, Texas, for the years 1909 to 1922, inclusive, and for 1924 and 1925, were marked for identification (R. 1393).

The witness further testified, on cross-examination by counsel for Massachusetts, that he never had occasion to investigate where Green slept at night; that he had a residence at Dallas; lived over there and came to Terrell to vote; he was supposed to vote in that ward and witness never questioned it (1395). On cross-examination by counsel for New York, the witness testified that regular voters in the County voted from some address but he does not remember what the poll list showed with reference to Green; he does not know whether or not he voted from 503 Pacific Avenue, the home of Mrs. Jarvis (1396-7).

On cross-examination by counsel for Florida, the witness said he was in Terrell when Green came over in 1904; he then lived in some rooms upstairs in the old Opera House in Terrell (1398-9); some time later Green had a home in Dallas and would go from there to Terrell (1399); after he left Terrell for Dallas, witness thinks he did not have a home in Terrell but came down in his car (1400).

On recross-examination by counsel for Massachusetts, the witness stated that in 1927 Green's private car was not parked in Ward 3 but he cannot say where it was parked

afterwards; there was a side track in Ward 3 belonging to the Midland Railroad but witness cannot say whether or not the car was parked there but knows it was parked somewhere on the Midland or the Texas & Pacific Railroad tracks running through Wards 1, 2 and 3 (1408); witness does not know whether Green ever slept in Ward 3 a single night in his life (1410).

James Branch Tartt, a resident of Terrell, Texas, testified that he first went to Terrell in 1893 and remained several years and after an absence, returned there definitely to live in 1917 (1411-12); that he came to Terrell to work for the Texas Midland Railroad and became acquainted with Green, its President (1413)—first as an accountant and afterwards as auditor and traffic manager—until 1900 (1414); Green was then living at the Harris House and witness stayed at the same place; he afterwards moved to the building known as the Opera House across from the hotel and witness moved with him (1414); Green told witness and T. E. Corley that he had rented the upstairs of the building and was going to fit it up for living apartments and they could live with him, paying the same board they paid at the hotel; the rooms Green rented were on the south side of the building—four large rooms on the second floor, the first at the top of the stairs was the kitchen and bathroom and sleeping quarters for the cook, the next room was the dining room, then a bedroom occupied by witness and Corley, and then Green's bedroom; on the other side of the hall was the Opera House; Green had a negro servant who acted as his valet and waited on the table (1415-16); the pine floors were carpeted with fine carpets and the furniture was nice; he had a new dining room table which was drawn out with a crank; witness stayed there about a year until he was married and then left; the others remained (1417); afterwards Green rented the whole second floor of the building and established his office and traffic department there and witness had his office there; Green occupied his bedroom for some time thereafter (1418); Green afterwards had an apartment on Elm Street in Dallas and then built the Commerce Street house in Dallas (1418-19); witness came in contact with Green nearly every day while stationed at Terrell between 1893 and 1900 (1419); in addi-

tion to his railroad activities, Green helped to organize and was active in the dramatic society and took quite an active interest in politics, helped finance a baseball team and military company (1420); he was a Republican and finally became Chairman of the Executive Committee (1421); witness left Terrell in 1900 and did not return until 1917; the last time he saw Green was in 1920 in the American National Bank at the time the President of the First National Bank of Terrell committed suicide; he was sitting at the table with a big stack of money piled up in front of him (1422); witness had not seen him in several years and told him he was glad to see him and Green said "I am glad to be home again" or "It is good to be home again" or something like that (1423).

On cross-examination by counsel for Florida, witness testified that the last time he knew anything positively about where Green lived was in 1900 (1425).

On cross-examination by counsel for New York, witness testified that while staying at the Oriental Hotel in Dallas, Green also had a bedroom at Moore Avenue and Virginia Street in Terrell which witness thinks was in the second ward (1425-26 and 1440).

Counsel for Texas then offered Tex. Ex. No. 32, a photostat copy of an affidavit of Edward H. R. Green made in New York City November 13, 1916, regarding a personal assessment against him as a resident of the State of New York, in which he stated, "Edward H. R. Green, being duly sworn, says, I am the person named in the annexed notice of assessment for personal estate as a resident of the City of New York for the year 1917. I am not and never was a resident of the City of New York or of the State of New York. I was born in London, England, the son of Edward H. Green, who was a resident of Bellows Falls, Vermont, and of Hetty H. R. Green his wife. In or about the year 1893 I took up my residence at Terrell, Texas, and ever since have been and still am a resident of Texas. I am and for about twenty-three years last past have been President and General Manager of Texas Midland Railroad, a corporation operating a line of railroad in Texas and having its offices at Terrell, Texas. I was Chairman of the Republican State Executive Committee of Texas for eight consecutive years beginning in or about the year 1896. During the years 1911 to 1914 inclusive I was an officer on the staff of the Governor of Texas by appointment of the Governor.

I have voted at Terrell, Texas, at every election since the year 1893, and voted there on November 7, 1916. I have paid poll taxes at Terrell, Texas, for many years last past including the year 1916. Edward H. R. Green." (1429). Also Tex. Ex. No. 33, a photostat copy of a similar affidavit dated November 13, 1916, in which he said, "Edward H. R. Green, being duly sworn, says, I am the Edward H. R. Green mentioned in the annexed notice of assessment of resident of City of New York for personal estate for the year 1917. I am sole Executor and Trustee of the estate of my mother Hetty H. R. Green. My sister Hetty Sylvia H. G. Wilks, who is also named in said notice renounced and refused appointment as an Executor and Trustee of said estate. Said Hetty H. R. Green was a resident of Bellows Falls, Vermont, and her will was probated there. I append hereto a certificate of the Probate Court of the District of Westminster, Vermont, certifying to my appointment."

and repeated the statement made in the preceding Exhibit No. 32 as to his residence in Terrell, Texas (1434-5 and 1442).

Counsel for Texas gave in evidence certificates of stock in various Companies organized under the laws of or engaged in business in the State of Texas in which Green owned stock, as Tex. Exs. Nos. 34-37 (1446-1453).

Also Tex. Ex. No. 38, a power of attorney from "E. H. R. Green, of Terrell, Texas," executed October 18, 1926, and acknowledged before a Notary Public, appointing Campbell E. Locke, of New York City, his attorney before the Treasury Department in connection with matters of taxation, especially questions relating to his income tax for the years ending December 31, 1922 and 1923 (1456-7).

Also Tex. Exs. Nos. 39, 39-A, 39-B and 39-C, being Certificates of Tax Collector of Kaufman County, Affidavit of Tax Collector of Kaufman County, County Clerk of Kaufman County, and the City Secretary and Tax Collector of Terrell, Texas, to the effect that Green had paid his poll tax and voted in the City of Terrell, Texas, for the years 1910 to 1916, inclusive (1461-1468).

Also Tex. Exs. Nos. 40 to 63 and 67 to 86, being copies of deeds and other instruments of title to realty to and from Green, from the Land Records of Dallas, Lamar and Kaufman Counties, Texas, in which Green was described as "of

Terrell'' and/or ''County of Kaufman, Texas,'' covering the period from 1893 to the time of his death (Tex. Exs. Nos. 40 to 63; 1469-1584 and 67 to 86; 1633-1698).

Also Tex. Ex. No. 64, copy of application of Edward H. R. Green, residing in Terrell in the County of Kaufman, State of Texas, and Miss Mabel E. Harlow, of Highland Park, in the County of Lake and State of Illinois, for a marriage license, signed and sworn to before a Notary Public July 9, 1917 (1585-1592).

Also Tex. No. 66, photostat copy of the Will of Hetty H. R. Green, dated March 28, 1911, proved and allowed July 22, 1916, in the Probate Court for the District of Westminster, State of Vermont, (1592-1608), and particularly Item 7, reading, ''I give, devise and bequeath all the rest, residue and remainder of the Estate of my deceased father, Edward Mott Robinson, to my beloved son Edward Howland Robinson Green, of Terrell, State of Texas, and to his heirs and assigns forever; the same to be for the sole and separate use and benefit of my said son, to the exclusion of any interest therein or control thereof by any wife whom he has or may wed.'' (1593-5)

Bryce L. Twitty testified that he was Superintendent of Baylor University Hospital at Dallas, was born four miles east of Terrell in 1898 and lived on a farm there for about ten years; as a boy he was acquainted with Green and played on the farm of Colonel Green, which was a large farm, with a two-story unpretentious farm house (1699-1702); that his father was often there to dine and Green entertained the neighboring farmers there; that his equipment was better than the neighboring farmers (1702); Green would come there for a week or two and then be away some times for several months (1703); Green cultivated the friendship of the neighboring farmers, sent them fresh meat when he killed, etc., sometimes ate with them and seemed to have a lot of people from Terrell or other places to eat with him (1706-7).

On cross-examination by counsel for Florida, the witness said he left the farm in 1910 when he was about twelve years old; that when Green was there the farmer's wife took charge of the house and supervised the cooking (1708-9).

HARRY GALBRAITH testified that he was a resident of Terrell, Texas, and editor of the Terrell Daily Tribune; in 1893 he was a reporter on the Times Star; knew Green and met him on the occasion of his first visit to Terrell in 1893 at the Harris Hotel; he was sent there to interview him about an item that had appeared in the daily news regarding his purchase of a branch of the Houston and Texas Central Railroad, known later as the Texas Midland (1731); Green told him he had bought the Railroad; that he was going to make his home in Terrell and was going to make it one of the best Railroads in the Southwest; that he wanted the best power, rolling stock, heaviest steel and best roadbed, and he proceeded to do all of those things (1732); Green then lived at the Harris Hotel for a short time and then built the Green Flats in what is known as the Harris Opera House; Green was a many sided character—he could not only run the Railroad but could "wild-cat" for oil, study astronomy, fight the boll weevil, run a chicken ranch and demonstration farm, was a patron of aviation, etc. (1733); he was public spirited and entered into the activities of the community; witness played on his baseball team; Green was end man in the local minstrels and was active in Republican politics (1734); Green had the first moving picture machine and the first automobile in Terrell; he has interviewed Green hundreds of times, went to his office every day; witness has lived continuously in Terrell since 1883; that in the late nineties or early 1900's, witness referred to Green as "Colonel Green of Terrell and New York" and Green took offense at the "New York and said Please leave that off—I am from Terrell" (1737); in 1927, he saw Green in his private car at the intersection of the main street of Terrell with his Railroad, about the reported sale of the Railroad; Green said it was so, and that the Railroad had never been a bonanza from the start and latterly had been all vanity and vexation, and besides his care of his business in the North was all that he could do and he had concluded to sell. Witness asked him if the sale of the Road meant that he was going to throw Terrell into the discard and cause him to shake the dust off his feet and he replied, "Certainly not; Terrell has been my home since 1893 and will so continue to the end" (1738).

In 1935, Green's private car came through Terrell on his way North from Marlin and witness was delegated by the Chamber of Commerce to present some resolutions of sym-

pathy and hope for his recovery to him in his private car, but they said he was too sick to receive even his Terrell friends and witness presented the resolutions to Mrs. Green on the rear platform.

So far as witness knows, no one was admitted (1739).

On cross-examination by counsel for Massachusetts, the witness testified that since his testimony in the New York Case he had consulted the files of the Terrell Daily Tribune and found that he had interviewed Green in 1927 (1748).

On cross-examination by counsel for New York, the witness testified that Green had a room engaged at the house of his neighbor, Mrs. Jarvis—directly across the street from him; that he has never seen Green there (1752). (Subsequently, at the hearing in New York City January 10, 1938, counsel for Texas produced a letter from the witness transmitting the clipping—Tex. Exs. Nos. 88 and 88-A—and stating that he had two interviews with Green on May 10, 1927, and in the second interview he made the remark to which witness testified (1805-14).

At the hearing in the Roosevelt Hotel, New York City, January 10, 1938, counsel for Texas further gave in evidence Tex. Ex. No. 89, a photostat copy of the Certificate of the Treasury Department dated September 1, 1936, covering the verification of the income tax return of Edward H. R. Green, of Terrell, Texas, for 1917 on file in the Department (1827). The Schedules accompanying the Certificate were admitted as N. Y. Ex. No. 10.

Counsel for Texas thereupon gave in evidence Tex. Exs. Nos. 90 to 274, inclusive, being copies of deeds and other instruments of conveyance to and from Green, duly executed between 1894 and 1928, and recorded in the Counties of Kaufman and Hunt, State of Texas, in which Green was described as of the County of Kaufman, State of Texas. (1848-2132.)

Also reports of the Texas Midland Railroad on file with the Railroad Commission of the State of Texas from 1893 to 1926, in which it was recited that Green's residence, as President was Terrell, Texas, in corroboration of the testimony of the witnesses Corley and Wells, who stated that he had instructed them to put in his residence as Texas (2137-2187; Tex. Exs. Nos. 275 to 275JJ).

Also Tex. Ex. No. 276, a copy of the certificate of the Comptroller of Public Accounts of the State of Texas, dated July 29, 1936, certifying that an examination of the Tax

Collector's Rolls of Kaufman County showed tax payments in the name of Colonel Green for the years 1919 to 1929, both inclusive, of a State tax of $1.50 and a County tax of 25¢ (2189-91).

Counsel for Texas also gave in evidence, as Tex. Ex. No. 277, Mass. Ex. No. 34 for identification (1393; 2365-7), being receipts issued to Green for poll tax paid to the City of Terrell and the County of Kaufman, Texas, for the years 1910 to 1929, both inclusive, for the purpose of showing the payment of poll taxes by and on behalf of Green in the years indicated (2205-6; 2215-16). The receipt for 1909 bears the stamp "Voted November 8, 1910"; that for 1911 is stamped "Voted in 1912"; that for 1913 is stamped "Voted November 3, 1914"; that for 1915 is stamped "Voted in 1916"; that for 1917 is stamped "Voted in 1918", and that for 1919 is stamped "Voted November 2, 1920" (2366).

Counsel for Texas thereupon gave in evidence Sections 2960 and 2968 of the Revised Civil Statutes for the State of Texas for 1925, exempting poll tax for persons over sixty years of age (2239-2243).

"Art. 2960 (2943) Exempt from poll tax.—Every person who is more than sixty years old or who is blind or deaf or dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he has obtained his certificate of exemption from the county tax collector when the same is required by the provisions of this title. (Id.)" (T. 2250-2259.)

Counsel stipulated that under the law Green was exempt from the payment of poll tax because of the loss of his leg but continued to pay the poll tax one year after he was again exempt because over sixty years of age (2244-5).

Counsel for Texas gave in evidence Tex. Ex. No. 280, being a copy of the certificate dated May 17, 1937, addressed to Thomas W. McDonald, Temporary Administrator, Estate of Edward H. R. Green, signed by Roy H. Palmer, First Assistant Director, Income Tax Bureau, certifying that an examination of the records of the Tax Commission of the State of New York showed that no income tax return was filed by said Green under the provisions of Article 16 of the Tax Law of the State of New York prior to the date of his death, June 8, 1936 (2264-7).

Also Tex. Exs. Nos. 281 and 281-A and B, photostat copies of letters dated November 14, 1916, from the files of Colonel

Green, signed by Charles W. Pierson, of the New York firm of Alexander & Green, personal general counsel of Green and now deceased (2269-70 and 2278), (and the corrected certificates of assessment therewith transmitted) in which Pierson said: "After a hearing before the Commissioners of Taxes today we succeeded in having the assessments of $20,000,000 and $10,000,000 against the Estate and yourself individually cancelled. Enclosed are certificates in customary form signed by one of the Commissioners (White) showing such cancellation. These should be carefully preserved" (2271).

Also Tex. Ex. No. 282, notice of assessment of tangible property of non-resident for the year 1932, "You are hereby notified that the tangible personal property owned by you and having an actual situs in the City of New York, and not forming a part of capital invested in business in this State, has been assessed for the year 1933, at $5,000" (2280).

Counsel for Texas gave in evidence Tex. Ex. No. 285 (2293), Certificate of Incorporation of the Green Floral Company executed March 24, 1909, in which it was recited, "That we, E. H. R. Green, Eugene Corley, Harry Donnelly and A. Millar, all citizens of the State of Texas, and all residing in Dallas, Texas, except the said E. H. R. Green, who resides in Terrell, Texas, have and do hereby associate ourselves together for the purpose of creating a private corporation under the laws of the State of Texas" (2294).

Also Tex. Ex. No. 286, a copy of an application for membership by Green in Lodge 5, Knights of Pythias, dated April 6, 1893, stating "his residence" as "Terrell, Texas" (2302).

Also Tex. Ex. No. 287, copy of an Agreement executed May 7, 1928, between "E. H. R. Green, of Terrell, Texas" and the Southern Pacific Company for an option to purchase his share of stock in the Texas Midland Railroad Company (2306).

Also Tex. Ex. No. 288, report of certain proceedings in the matter of the transfer tax upon the Estate of Hetty H. R. Green in the Circuit Court of New York County,

State of New York, in which said Edward H. R. Green testified (2326; 2331-2337):

"Edward H. R. Green, being duly sworn, deposes and says:

"I. That he resides at Terrell, Texas.

"II. That said decedent died on the 3rd day of July, 1916, a resident of Bellows Falls, State of Vermont, testate, and letters testamentary were issued on the 22nd day of July, 1916, by the Probate Court of the District of Westminster, State of Vermont. The facts showing the decedent to be a resident of such State are set forth in the affidavit of E. H. R. Green as to residence of decedent, verified November 1st, 1916, which is attached hereto and made a part hereof.

* * * * * * *

"Whereas, on the 22nd day of July, 1916, an instrument in writing, purporting to be the last Will and Testament of Hetty H. R. Green, late of Rockingham in said District, deceased (a copy of which is hereunto annexed) was duly proved and allowed by said Probate Court, as the last Will and Testament of said deceased:

Edward H. R. Green, Estate Witness.

"Q. New Bedford, Massachusetts?

"A. Yes, sir.

"Q. This was bequeathed to her by her aunt, Sylvia Ann Howland?

"A. Yes, sir.

"Q. You say she had no furniture or household fixtures anywhere else than at Bellows Falls at the Tucker House except for this stuff bequeathed by——

"A. That's all I know of.

"Q. You said that you were manager of the baseball club until you went to Fordham; did you go to college—Fordham College?

"A. Yes, sir.

"Q. What years were you there?

"A. I was there in 1886 and 1887.

"Q. Then where did you go?

"A. I went to Chicago to look after business properties.

"Q. How long were you in Chicago?

"A. I think it was about a year and a half.

"Q. Where did you go next?

"A. I came back East and made arrangements—went down and foreclosed a piece of railroad called the Texas Central Railroad, and which I took charge of.

"Q. That is in Texas?

"A. Yes, sir; in 1892.

"Q. What office did you take with respect to that railroad?

"A. President and General Manager.

"Q. You became President and General Manager when?

"A. February 28, 1892.

"Q. Now, isn't it a fact that after you went to Chicago in 1887, you were there until shortly before you went to Texas?

"A. It might have been three or four months with a lapse between the time that we were reorganizing the road.

"Q. Three or four months between the time when you came away from Chicago and the time you went to Texas, you mean?

"A. Yes, sir.

"Q. Where have you resided yourself since 1892?

"A. Terrell, Texas.

"Q. You have lived there ever since?

"A. Until about five years ago.

"Q. You still retain your residence there, don't you?

"A. That's where I vote, yes, sir.

"Q. You are still President and General Manager of the Texas Midland Railroad?

"A. Yes, sir.

"Q. After going to Texas in 1892, how frequently did you see your parents?

"A. I used to spend the month of August at Bellows Falls.

"Q. You spent the month of August with them?

"A. Yes, sir.

"Q. At Bellows Falls?

"A. Yes, sir.

"Q. And where in Bellows Falls?

"A. At the Tucker House.

"Q. Your father and mother would be keeping house there at the time?

"A. Yes, sir.

"Q. Do you remember the time of your father's last illness and death?

"A. No, sir, I remember the death; I didn't attend at the funeral.

"Q. How had it happened that you were not at the funeral?

"A. I was laid up sick with varicose veins.

"Q. Had you been up at any time during your father's last illness?

"A. Yes, sir, I was up twice.

"Q. Where did you go when you came up?

"A. At the house.

"Q. You mean the Tucker House?

"A. Yes, sir.

"Q. Bellows Falls?

"A. Yes, sir; we were living there.

"Q. What year was it that your father died?

"A. My father died March 19, 1902, I think.

"Q. Now, after your father's death in 1902, did you come North from time to time to see your mother?

"A. Yes, sir.

"Q. And what time of the year were you accustomed to come North?

"A. Oh, it was always in July—the latter part of July or August.

"Q. And where would you see her ordinarily?

"A. At Bellows Falls.

"Q. Do you recollect the illness your mother had in 1911?

"A. Yes, sir.

"Q. You came North at that time, didn't you?

"A. Yes, sir, she was taken sick at Hoboken.

"Q. She was lodging there at the time, was she?

"A. Yes, sir. She telegraphed for us to come up and bring Mr. Ogden up; she wanted a will drawn.

"Q. Mr. Ogden was the Texas counsel for the Green interests, was he not?

"A. Yes, sir.

"Q. And it was at that time that she made her will, wasn't it?

"A. Yes, sir.

"Q. That was made when and where, if you recollect?

"A. It was made in those Hoboken apartments on Washington Street—Twelve thirteen, or something like that, Washington Street.

"Q. Now, since 1911 and your mother's illness at that time, you have spent the greater part of your time up here, have you not?

"A. Yes, sir.

"Q. For what purpose?

"A. Straightening out and disposing of the real estate she had, which was unproductive.

"Q. Helping her in her affairs generally?

"A. Yes, sir.

"Q. What's the Westminster Company?

"A. The Westminster Company was a company organized for the purpose of handling Mrs. Green's affairs so that she wouldn't be required to sign the papers.

"Q. This company, which you handled?

"A. Yes, sir; I was President.

"Q. Now, did she come around every day?

"A. Well, I couldn't say every day, but when she would come, she would come and look in the office and see if we were working, and if we were, asking us what we wanted—she wanted to know if there was anything she was wanted for. And sometimes we would say yes, and sometimes no, and then she would go again, and we wouldn't see her in the next two or three days.

"Q. Did she sometimes stay away for considerable periods?

"A. Yes, weeks at a time.

"Q. It would be weeks at a time that you wouldn't see her?

"A. Yes, sir. She wasn't in the best of health, you know, and she wanted a rest.

"Q. Since 1911 you have not been here all the time, I suppose, have you?

"A. No, sir, I have not been here all the time. I have been looking after her business all the time.

"Q. Have you been back to Texas some part of the time?

"A. Sometimes three times a year; and Oklahoma two or three times; and California; and very often Chicago, because we have a great deal of real estate in Chicago which we have been leasing and selling.

"Q. Boston?

"A. Yes, sir. I am required to go there as trustee for the Sylvia Howland estate.

"Q. Sylvia Howland estate is the estate of your aunt, Sylvia Howland, to which you have already referred?

"A. Yes, sir.

"Q. Are you able to say whether she has been to Bellows Falls some part of every summer since 1911, when, as you say, you came up to help her?

"A. Yes, sir.

"Q. Was she there in 1915?

"A. Yes, sir.

"Q. Do you remember, Col. Green, your appointment as trustee under the will of your grandfather, Edward Mott Robinson, in Ohio?

"A. Yes, sir."

Also, from the testimony of said Colonel Green, in said proceeding the following:

"She (Hetty H. R. Green) never loaned money on call or in the 'Street.' She did not deal with the public or hold herself out to the public as having money to lend. She maintained no office and had no office force. She had no particular fund employed in or set apart for lending. Such loans as she took were paid for out of her current bank balance, which ordinarily consisted, in part at least, of accumulated income.

"After the formation of the Westminster Company the loans on collateral held by her were turned over to that company and at the time of her death she held no such loans in New York.

"The Westminster Company was incorporated under the Laws of New Jersey in the year 1911 with an authorized capital stock of $125,000. At the time of Mrs. Green's death (July 3, 1916) its stockholders were Hetty H. R. Green, 630 shares; Edward H. R. Green, 600 shares; J. H. Isbills, 10 shares; and W. K. Potter, 10 shares.

"I have been President and chief executive of the company since January 2, 1914. After that date Mrs. Green had nothing to do with the management or direction of its affairs, although I consulted her from time to time. The Company was formed after Mrs. Green's health began to fail to relieve her of care and enable me to handle active investments and matters requiring the signing of papers. Its

business activities have consisted in caring for investments taken over from Mrs. Green and making further investments. The Company took over from Mrs. Green many of her investments of various kinds, including the loans on collateral held by her. Thereafter when she had money to invest the investments would ordinarily be made by me as President of the Westminster Company and taken in the Company's name, and the amount paid would be debited to the company on her books and credited to her account on the company's books. The company did not loan money on call or in the 'Street.' From time to time as its bank balances increased faster than permanent investments were found it took over loans on collateral made by banks as Mrs. Green had previously done, but such loans were always time loans and were held by the company as investments. The company did not deal with the public or hold itself out to the public as having money to lend. The company had no particular fund employed in or set apart for lending. The company did not act as agent for Mrs. Green. Securities and other properties taken over from her were assigned or transferred into the company's name and the cost thereof, together with all moneys received from her, were debited to the company on her books and credited to her on the company's books among accounts payable and were treated as an indebtedness of the company to her. The income from investments held by the company was treated as belonging to the company and from time to time dividends were declared and paid therefrom to the stockholders.

"Windham Realization Company, Inc.

"The company was incorporated in 1912 under the Laws of the State of New York with an authorized capital of $10,000. Mrs. Green was never a stockholder of record but its capital stock was held in her interest. I am President of the company and have had the management of its affairs. Mrs. Green was never an officer or director nor did she ever have anything to do with managing or directing its affairs.

"This corporation was organized for the purpose of taking over and foreclosing mortgages in default belonging to Mrs. Green and allied interests.

* * * * * * *

"Q. Did Mrs. Green buy any notes in New York City after July 1st, 1914?

"A. No, sir.

"Q. Col. Green, did you testify on your former examination that the Westminster Company was a company organized for the purpose of handling Mrs. Green's affairs so that she would not be required to sign the papers?

"A. Yes, sir.

"Q. And was that the fact?

"A. Yes, sir.

"Q. And were you the president of that company?

"A. At the time you are talking about, yes, sir.

"Q. Well, weren't you always the president of it?

"A. I was either president or vice-president of it all the time.

"Q. Was the $125,000. of the authorized capital stock actually paid in *in* cash?

"A. Yes, sir.

"Q. Who contributed the money for the payment of the capital stock?

"A. Mrs. Green.

"Q. Did the company ever declare any dividends?

"A. Yes, sir, annually.

"Q. And were those dividends paid to Mrs. Green?

"A. For 630 shares; the balance of the dividends I received.

"Q. How did it happen that the dividends were paid to you upon the 600 shares of stock, although the purchase price of them was paid by your mother?

"A. I suppose it was because it was an arrangement my mother promised to give me for coming up here, starting me in business, I suppose. The 600 shares were given to me as a present.

"Q. Then what happened was that she paid $125,000. into the treasury of the company and gave you these full paid shares?

"A. Yes, sir.

"Q. And so far as the company required other capital from time to time did your mother furnish it?

"A. Yes, sir.

"Q. Now just what did the Westminster Company do?

"A. Took care of her property that she had in Chicago, the railroad she had in Texas, property she had in Boston and New Bedford, and looked around for investments to invest its own capital in.

"Q. Did the company engage in any business in the City of New York?

"A. Not outside of buying some investments" (2340-42; 2344-46).

Counsel for Texas gave in evidence Tex. Ex. No. 289, a Consolidated Certificate of Enrollment and Yacht License, dated December 15, 1925, issued to Colonel Green, of Galveston, Texas, New York address, 111 Broadway, New York City, New York, on the "Mabel G., of Galveston, Texas" (2347-2357) and showing a number of renewals for the years 1926 to 1937 at the Port of Miami, Florida.

Also Tex. Ex. No. 290, copy of Agreement for the sale of the yacht "United States" dated February 26, 1923, by Colonel Green, "of Terrell, State of Texas," (written over the words "New Bedford, Massachusetts") owner, to the Peninsula & Northern Navigation Company, a corporation (2371).

Also Tex. Ex. No. 291, copies of Orders issued by the Adjutant General's Department, Texas National Guard, Austin, May 15, 1914, containing a roster of the National Guard, among others, "Lieut. Colonel E. H. R. Green, Terrell," and Tex. Ex. No. 292, a photostat copy of a letter from Colonel Green's files, dated December 18, 1914, addressed to Colonel York, Assistant Adjutant General, Austin, Texas, enclosing check for $100 for a contribution to a Christmas remembrance from the Staff to the Governor (2379).

Also Tex. Ex. No. 293, copy of letter from Edwin R. York to Green January 3, 1936, Star Island, Miami Beach, Florida, the first paragraph of which reads, "My good friend Mr. A. Garland Adair, Chairman American Legion Texas Centenial Committee has just advised me of your good letter of December 23, 1935, he did more than this, he permitted me to read this letter; Texas has always been proud of her son E. H. R. Green, and we still claim you, and you cannot get away, however we will let Florida have you for a few months each year" (2381), and Green's reply, Tex. Ex. No. 294, January 6, 1936, the first paragraph of which reads, "Yes, I have one of those photographs of Governor Colquitt's Staff. I had it tinted in oil paints, suitably framed, and it now occupies a prominent place in my summer home at South Dartmouth, Mass. As I recall, it was very hot in Austin the day that picture was taken. I remember I was having an awful time getting that uniform on correctly, according to the diagram, when several other members of the Staff (perhaps you were one of them) came into my room

and offered to help me. With the combined efforts of all the gentlemen in the room I was at last pronounced properly uniformed and it was after that the photograph was taken" (2385).

Also Tex. Ex. No. 295, a photostat copy of a license for a ship radio station from the Department of Commerce on the application of "E. H. R. Green, a citizen of the State of Texas," for the steam yacht "United States" Home Port "Galveston, Texas", issued November 3, 1917, to expire November 2, 1919, containing the applicant's description, etc., as among others: "Name of Applicant, Colonel E. H. R. Green; Address, New York City; a citizen of the State of Texas; Name and address of owner of radio apparatus: Col. E. H. R. Green, New York City; Name of Ship 'United States'" (2388-2402).

Also Tex. Ex. No. 296, a letter dated March 28th, 1919, to the Collector of Customs, Galveston, Texas, signed E. H. R. Green (2403-4), the body of which read,

"I enclose herewith applications for numbers for my ten motor boats, which I use during the summer months at New Bedford, Massachusetts. These applications were sent to the Collector of Customs at New Bedford, but were returned by him with the information that they should be sent to the Collector of Customs at the port at which or nearest to which I usually reside. Therefore, I am sending them to you with the request that you assign numbers and forward to me as soon as possible."

and accompanying returns for special tax on pleasure boats for the period from April to June, 1919, signed and sworn to by Green as individual owner and all giving his address as "Terrell, Kaufman County, Texas" (2404-9).

Also Tex. Exs. 297 to 315; miscellaneous correspondence with Green and other documentary evidence, between 1909 and 1926, in corroboration of certain evidence given on behalf of the State of Texas (2409-2444).

James G. Dallas testified that he had signed Tex. Ex. No. 279, dated May 17, 1937 (2453 to 2458), as to the search conducted in his office for the voting registration record of Edward H. R. Green during the years 1911 to 1936, inclusive, while residing at 5 West 90th Street, the old Waldorf-

Astoria Hotel, the Sherry-Netherland Hotel and 111 Broadway, and that such search failed to disclose any indication that Green had registered for voting at any of said addresses; that witness was chief clerk in charge of the records of the Board of Elections, Borough of Manhattan, New York City, and his office would have the custody of all voters entitled to vote from these addresses and there would be no records elsewhere.

On cross-examination, the witness further testified that the records of his office were complete from 1870 to date.

Counsel for Texas gave in evidence, as Ex. No. 317, pertinent provisions of the Texas Statutes relating to estate and inheritance taxes, being Appendix A filed with the Bill of Complaint (2484). Also the pertinent provisions of the general law of the Commonwealth of Massachusetts relating to inheritance and estate taxation and liens securing the same, being Appendix C with said Bill of Complaint, as Ex. No. 317-A. Also the Inheritance Tax Laws of the State of Florida, the Statutes pertaining to the same and to liens securing the same, Chapter 16,015, Laws of Florida, Acts of 1933, Appendix A with Answer of the State of Florida, as Ex. No. 317-B. Also the Inheritance Tax Laws of the State of New York and the Statutes relating to liens, Appendix A with the Answer of the State of New York, as Ex. No. 317-C. Also pertinent provisions of the Federal Revenue Acts affecting estate taxation and the liens securing the payment thereof, Appendix E with the Bill of Complaint, as Tex. No. Ex. 317-D (2483-8).

William K. Potter, as a witness for the State of Texas (2489), further testified that he had caused to be made a complete appraisal of the property, real and personal, belonging to the Estate of Colonel Green in New York, Massachusetts, Florida, Texas and Vermont; that the appraisal shows no real estate in New York (2489); that the appraisal of the jewels located in the State of New York at the time of the death of Green, made by Witherbee Black, President of the firm of Black, Starr and Frost-Gorham, prominent jewelers of New York City, indicated a fair market value of $482,543.25 (Tex. Ex. No. 318; 2490-2496); that the appraisement showed coins of the value of $1,338.57 and cash amounting to $3,040 in the decedent's possession at the

time of his death at Lake Placid (2498-2500; Tex. Ex. No. 319); that the appraisement of the collection of stamps located in the State of New York made by Walter S. Scott, indicated a value of $1,095,316 (2502-2506; Tex. Ex. No. 320); that the appraisement of certain miscellaneous tangible property consisting principally of furniture, desks, cabinets, etc., amounted to $982.00 (2507-10),—making the total appraised value of the physical properties situated within the State of New York $1,583,221.82 (2510-18; Tex. Ex. No. 321). The witness further testified, as shown by the summary, that the total value of the intangibles of the decedent at the time of his death, including accrued income thereon, was $35,831,303.69 (2526-2529). Said witness further testified that a calculation of the deductions from the gross estate showed debts $912,133.29, of which amount $872,530 appears in the New York accounting and the remainder in the Massachusetts accounting; administration expenses to January 2, 1938, $1,319,760.78, of which $1,259,666.57 appears in the New York accounting and the remainder in the Massachusetts and Florida accounting (2600-2); that the next item of deduction is future administration expenses, of which $1,275,000 is an estimate for commissions of Executors and Administrators based on the New York law for the three Administrators, which amount is about one-half of that permitted by the Statute for commissions (2602-3). The next item is $500,000 which has been calculated for future additional administration expenses (2604); and that the total of these debts, present and future administration expenses is $4,006,894.07 (2605).

On cross-examination by counsel for New York, the witness testified that the item of debts did not include any personal income taxes, because no such taxes had been paid and no allowance has been made in the statement of debts for any personal income taxes which may be due to New York or to Massachusetts in the event Green was found to be a resident of either State during his lifetime (2606). The witness further testified, in answer to questions by counsel for Texas, that the item of $500,000 includes an estimate for counsel fees (2609); that from his knowledge of the affairs of the Estate and the appraisals made in the Court proceedings, he knows of no other property of the Estate and of no other deductible items (2612). The totals, as summarized by the witness are as follows:

Gross Estate

New York:			
Real Estate			None
Personal Property (tangible)			
Jewels		$482,545.25	
Coins—Collection	$1,338.57		
Cash in decedent's possession	3040.00		
		4,378.57	
Stamps		1,095,316.00	
Miscellaneous		982.00	
Total—New York			$1,583,221.82
			$1,583,221.82
Massachusetts:			
Real Estate			$128,000.00
Personal Property (tangible)			
Jewels		$864,119.00	
Coins		1,234,921.82	
Stamps		203,132.00	
Miscellaneous		68,534.60	
Total—Massachusetts			2,370,707.42
			$2,498,707.42
Florida:			
Real Estate			$162,500.00
Personal Property (tangible)			
Coins		$4,039.70	
Miscellaneous		55,737.10	
Total—Florida			59,776.80
			$222,276.80
Texas:			
Real Estate			$2,220.00
Vermont:			
Real Estate			$6,500.00
Total Real Estate and Tangibles			$4,312,926.04

Intangibles

Securities, straight account	$8,524,709.32
Chase National Bank Decedent's checking account	261,042.20
Decedent's cash interest in Customers principal account	5,408,770.15
Decedent's cash interest in Customers income account	217,152.99
5th Avenue Bank	16.08
Due from Green Estate, Inc., Open account	5,907,483.93
Accrued interest on Open account, Green Estate, Inc.	27,896.45
Accounts Receivable	1,702.63
Decedent's one-half undivided interest in Customers Securities account	15,407,104.86
Bank account—New Bedford, Massachusetts	28,555.08
Bank account—Miami Beach, Florida	46,870.00
Total Intangibles	$35,831,303.69
Total Real Estate and Tangibles	4,312,926.04
Gross Estate	$40,144,229.73

Deductions

Debts		$912,133.29	
Administration Expenses to date	$1,319,760.78		
Estimated Future Administration Expenses:			
Executors' and Administrators' commissions	1,275,000.00		
Other Administration expenses	500,000.00	3,094,760.78	4,006,894.07
Net Estate			$36,137,335.66

(2014-15)

On cross-examination by counsel for Florida, the witness further testified that Colonel Green had paid personal income tax in New York but never paid any such tax in Massachusetts, Florida or Texas (2616).

Counsel made a statement for the record regarding the appointment in New York of a Temporary Administrator by the Surrogate's Court of Essex County, New York, October 9, 1936 to January 3, 1938 (2524-7).

Thomas Witter Chrystie, on behalf of the State of Texas, testified that he was Special Administrator of the Estate of Colonel Green in Bristol County, Massachusetts; that he caused to be made an appraisal of the real and personal property located within the State of Massachusetts as of the date of the death of Green by three appraisers appointed by the Circuit Court of Bristol County; that their appraisal of the interest of Green in the real estate was $128,000; that as to the property inherited from his mother, it was one-half and as to the properties purchased after his mother's death, it was a whole interest; that this real estate was located in the Town of South Dartmouth, Bristol County, Massachusetts (2532, 2534, 2537, 2543-4; Tex. Ex. No. 322).

Counsel for Massachusetts and Texas agreed that the Round Hill mansion was on land jointly owned by Green and his sister; the other improvements were on land owned by him (2543). Said witness further testified that the buildings on lands owned by Green outright were a family house for employees near the gate, the power plant, Blimp dock, portion of the air field, and the radio station and "Whaling Enshrined" are on lands inherited (2543-4); that there were a dozen farm outbuildings on land that Green purchased; that altogether there were approximately 60 buildings (2544); that the jewels found within the State of Massachusetts at the time of Green's death were appraised at $864,119 (Tex. Ex. No. 323; 2544-6); that witness found them in the South Dartmouth house when he was appointed in October, 1936, and for purposes of the appraisement they were conveyed to Boston (2547); that according to the appraisement, the market value of the coins, paper money and paper currency found in the South Dartmouth house was $1,234,921.82 (2548, 2550; Tex. Ex. No. 324).

On cross-examination by counsel for Massachusetts, the witness testified that the articles just described were found

by him in the safety deposit vault in the cellar of the South Dartmouth house when he became Special Administrator (2553).

On further examination by counsel for Texas, he testified that the appraised value of the stamps in the vault in the Massachusetts house at the time he took possession was $203,132 (Tex. Ex. No. 325; 2554); that he also found miscellaneous items in the South Dartmouth house at the time of his appointment which were appraised at $68,534.60 but does not know whether they were there at the time of Green's death (Tex. Ex. No. 326; 2558-2562); that these items consisted of furniture, paintings and other tangible personalty in the Round Hills residence, personalty in the outbuildings and at the South Wharf, Pandanaram, Massachusetts.

The witness further testified that he was appointed Special Administrator by the Probate Court of Bristol County, Massachusetts, October 21, 1936, and the same day proceeded to the Round Hill house and made an examination, saw the collection of jewels, stamps, coins and currency; that the house was then in charge of the widow, Mrs. Green, who continued to live there until December 8, 1936; that all of these valuables were in the vault in the cellar of the house and Mrs. Green had the combination (2563). The witness further testified that the total value of the property received by him as Temporary Administrator in Massachusetts was $2,498,707.42, including the real estate valued at $128,000 (2564). On cross-examination by counsel for Massachusetts, the witness stated that a list of personal property not contained in the Round Hill mansion showed eleven automobiles bearing Massachusetts license number plates (2566); the details of the automobiles are given in Tex. Ex. No. 326, pp. 291-2 (2570).

Counsel for Texas gave in evidence Tex. Ex. No. 327, the Report of the Appraisers and Application for Compensation in the County Judge's Court for Dade County, Florida, in re: Estate of Edward H. R. Green, Probate No. 8482 (2586-7), containing the following items:

"1. Checking account in Miami Beach First National Bank, Miami Beach, Florida $46,870.00
2. Fractional currency, Texas Centennial half dollars, silver certificate sheets, old coins, etc. (See Exhibit A) 4,039.70
3. Four boats (See Exhibit B) 10,500.00

4. Furniture, furnishings and equipment (See Exhibit C)	15,237.10
5. Lots 21, 46 and 22, Star Island, Miami Beach, Florida (Exhibit D)	100,000.00
6. Acreage—W. ½ of S. E. ¼ of N. E. ¼ of Section 34, Range 53 South, Range 31 E., Dade County, Fla. (See Exhibit E)	2,500.00
7. Property subject to an agreement for deed to Fogal Dry Dock and Storage Company (See Exhibit F)	60,000.00
Total	269,146.80

That from the public records of Dade County, Florida, there has come to their knowledge an agreement for deed and certain mortgages:

8. Agreement for deed from E. H. R. Green to Fogal Dry Dock and Storage Company (See item 7 and Exhibit F)	
9. Mortgage on Lot 1, Block 69, Ocean Beach Addition No. 3, Miami Beach, Florida, (See Exhibit G)	5,107.50
10. John Sewell mortgage (See Exhibit H)	25,000.00
11. Fogal Boat Yard, Inc., mortgage (See Exhibit I)	16,034.67
Total	$46,142.17

That they are advised and believe that the originals of said agreement for deed, mortgages and notes secured thereby are not in the possession and control of the Ancillary Administratrix, but are outside the State of Florida;

That there has come to their knowledge holdings in certain Florida corporations:

12. Stock holdings and memberships in Florida corporations (See Exhibit J)	$17,000.00

That they are advised and believe that the stock certificates and membership certificates evidencing the said stock holdings and memberships are not in the possession or control of the Ancillary legal representative, but are outside the State of Florida."

Counsel for Texas also gave in evidence inventory and appraisement of the appraisers appointed by the County

Court of Kaufman County, Texas, of 111 lots valued at $20 each, $2,200 (Tex. Ex. No. 328; 2589-94).

Also as Tex. Ex. No. 329, an appraisal under the Federal Estate Tax Law of real property in the State of Vermont, consisting of an undivided one-half interest owned by the decedent, valued at $6500 (2595-7).

Henry F. Long testified that he was a resident of and Commissioner of Corporations and Taxation for the State of Massachusetts and had been such since 1920, having charge of all tax matters of the Commonwealth, and has become familiar with calculations of both Federal and Massachusetts State taxes (2627-8); that he had prepared a calculation based upon a net taxable estate of $36,137,335.66 of the amount of the Federal Estate tax under the Acts of 1926 and 1935; that the total under the 1935 law would be $22,769,761.61,—and under the 1926 Act $6,560,967.13,—and the 80% credit to which the Estate would be entitled would be $17,520,987.93 (2629-30 and 2693); that assuming the correctness of the estimate of the assets and deductions of the Estate already given in evidence and that all real estate and personal tangible property is located as has been proven, the inheritance and estate tax due the Commonwealth of Massachusetts if Colonel Green died domiciled within that Commonwealth would amount to $4,947,008.59; and based upon the same assumption, the Commonwealth of Massachusetts would claim as estate and inheritance taxes if Colonel Green had died domiciled in some other State $326,700; that he also is familiar with the estate and inheritance tax laws of the State of Vermont and based upon the same assumption and the evidence introduced as to the amount and location of the various items in the Estate and assuming that Colonel Green died a non-resident of the State of Vermont, the inheritance and estate taxes due that State would amount to $325 (2691-2).

On cross-examination by counsel for Mrs. Wilks, the witness testified that the United States Government, under the Federal law, would have a lien on all of the property of the Estate for the amount of the tax and that the Commonwealth of Massachusetts would also have a lien under the Massachusetts law on all property within its jurisdiction belonging to the Estate for the amount of its tax (2631).

On cross-examination by counsel for New York, he testified that in arriving at the total tax collectable by Massachusetts he had not allowed anything for taxes which might be collectable by New York, Florida and Texas on a non-resident basis (2633); that the figure given does not represent what the claim of Massachusetts for taxes against the Estate would be in the event that non-resident taxes were imposed by New York, Florida or Texas, and furthermore witness does not construe the law of Massachusetts to give the estate of a resident of Massachusetts credit for taxes on real estate situated in Florida or that the estate would be entitled to the Federal credit for Federal taxes imposed upon tangible personal property having its situs in New York, or on real property situated in Texas or upon tangible property having its situs in Florida; that the State of Massachusetts has made a claim against the Green Estate for personal income taxes due by Green in his lifetime but the amount has not been calculated (2634-5); that this claim was filed in 1936 but no effort was made to collect it before the death of Green because it was in the nature of a demand to file a tax return; that under the statute of limitations the claim can be enforced at any time during the year and the latest period would be September 1st of the second year following (2637); that this claim covers the years 1934, 1935 and 1936 up to the time of his death; the period before that is barred (2638).

In response to questions by counsel for Massachusetts, the witness testified that he was a member of the Bar of Massachusetts and that under the law of that State if Green were found to be domiciled in Massachusetts, the Commonwealth under its taxing statutes would claim a lien upon all of the intangible property of the Estate to satisfy its tax claim (2638); that he would assume that the intangible property would be in their jurisdiction wherever it was located but that Massachusetts could not enforce a lien against property outside of the Commonwealth (2639); that he had made an investigation in his official capacity and concluded that Green was domiciled in Massachusetts and therefore he determined to proceed to collect the tax which would be due the State; that on the assumption that Green was domiciled in Massachusetts, he was making an effort to collect the amount of tax claimed and that if Green was found to be domiciled in Massachusetts, that State would assert a lien against the property of the Estate other than tangible per-

sonalty and real estate wherever such intangible property is located and endeavor to collect the tax (2690-3).

GEORGE H. SHEPPARD testified that he was a resident of Austin, Texas, and Comptroller of that State in charge of the computation, assessment and collection of inheritance and State taxes against the estates of decedents (2673), and thereupon he further testified as follows: Assuming that Colonel Green died a resident of Texas on the 8th day of June, 1936, and left an estate consisting of tangible personal property situated in New York, valued at $1,583,221.82, and of real estate and of tangible property situated in Massachusetts valued at $2,498,707.42, and of real estate and tangible property situated in the State of Florida valued at $222,276.80, and of real estate situated in Texas in the amount of $2,200, and real estate in the State of Vermont valued at $6,500, and of intangibles valued at $35,831,303.69, making a total gross estate of $40,144,229.73, and that the deductions against that estate amounted to $4,006,894.07, leaving a net estate taxable Federally of $36,137,335.56, the Texas tax would be $4,685,057.73 (2678).

WILLIAM MCCRAW testified that he was the Attorney General of the State of Texas and the Chief Law Enforcement Officer of that State and the only person authorized under the Constitution and Laws of the State to bring a suit in the name of the State; that George H. Sheppard is Comptroller of Public Accounts and charged with the collection of estate and inheritance taxes (2694-5); that witness and Mr. Sheppard made an investigation of the domicile of Colonel Green at the time of his death and reached the conclusion that he was domiciled in Terrell, Kaufman County, Texas (2695-6); that at the request of the said Comptroller he has made an effort to collect the estate and inheritance taxes which may be due the State if Green died domiciled there and it is his intention to do all in his power to effect the collection of the same out of the property of the Estate wherever he may come upon it (2696); that based upon the computation already given in evidence, if Green died domiciled within the State of Texas, the amount due that State for estate or inheritance taxes would be $4,685,057.73 (2696),

and if he died domiciled in some other State, nothing would be collectible (2697).

Llewellyn B. Duke testified that he was Assistant Attorney General of the State of Texas and authorized to act for the Attorney General; that he is the titular head of the tax desk in the office of the Attorney General; that according to his understanding of the laws of Texas, if a decedent dies domiciled in that State, the State would assess and endeavor to collect a transfer or inheritance tax against his estate and would have a lien upon the property of such decedent wherever located and that the State of Texas would endeavor to collect the taxes and enforce the lien (2698).

Seth T. Cole testified that he was Special Assistant Attorney General of the State of New York and has been counsel for the Tax Commission from August 1, 1908 to July 15, 1937 (2699-2700), and is conversant with the laws of New York relating to inheritance and estate taxes and the manner of collecting the same; that assuming that the appraised valuations, deductions, location of properties as given in evidence to be correct and that Green was a non-resident of the State of New York at the time of his death, the estate or inheritance tax due the State of New York would be $257,891.30; that the State of New York is claiming in a proceeding commenced before this case and now pending in the Surrogate's Court of Essex County, New York, for the purpose of fixing the estate tax upon the Estate of said Green, in which case witness is counsel, that Green died domiciled in the State of New York (2700); that but for the institution of this suit in the Supreme Court of the United States, the State of New York would have proceeded with its efforts to collect the tax; that the claim of the Tax Commission of the State is and always has been that Green was domiciled in the State of New York at the time of his death and that his Estate was subject to estate taxes under the laws of that State; that the law of the State imposes a lien upon all of the property of a decedent for the amount of the New York tax, but whether or not New York has the power to impose a lien upon property which does not have a situs within the State so that it can be reached by process of the Courts of New

York State, is a legal question concerning which lawyers might differ; that the fact is that the property and estate of Green within the State of New York at the time of his death is subject to the authority of the Courts of that State and was more than ample to cover any tax that might be assessed by the State of New York upon his Estate, so that there would be no question that if New York assessed its tax against the Estate of Green on a domiciliary basis, it would collect the tax (2702).

Thereupon said witness further testified: I have computed the amount of estate tax that would be due the State of New York under the provisions of Article 10-C of the tax law of that State in the event Colonel Green died a resident of that State, by using figures which were testified to and which appear in the record of this proceeding as follows: I have taken the New York real estate and tangible personal property valued at $1,583,221.82 and have added to that the sum of $35,831,303.69, representing the value of all of the intangibles owned by Colonel Green at the time of his death, which gave a total New York gross estate of $37,414,525.51. For the purpose of arriving at the net estate, I have eliminated from the total deductions figure of $4,006,894.07 the sum of $392,455, representing deductions attributable to real and tangible personal property not situated in the State of New York, which left a figure of $3,614,439.07. The State of New York has assessed personal income taxes against Colonel Green for the years 1919 to 1936, inclusive, which with interest up to the time of Colonel Green's death amounted to $920,827.35.

I have added that to the other deductions, which made the total deduction $4,535,266.42. Taking that item from the New York gross estate, I found a New York net estate of $32,879,259.09. I then allowed an exemption of $5,000 on account of the transfer of property to Mrs. Wilks, Colonel Green's sister, and then computed the tax and found that the amount of tax that would be claimed by the State of New York, if Colonel Green was a resident of that State at the time of his death, on the basis of the figures which appear in this record, was $5,910,301.80. (2709-10)

Frank H. Butler testified that he was Deputy Commissioner of Revenue for the State of Florida and had been

since 1931 (2661-2); that following the death of Colonel Green, the State of Florida made an investigation to determine whether or not he was domiciled in Florida at the time of his death; that they reached the conclusion that he was then domiciled in the State of Florida and they took steps to institute an action looking to the collection of the estate and inheritance taxes due the State of Florida based upon such assumption of domicile (2704); that the witness made a calculation based upon the assumption that he was domiciled in Florida and upon the correctness of the evidence already given as to the values and locations of the various items of property belonging to his Estate and upon the theory of the Florida residence, the amount of the tax which Florida seeks to collect is $4,663,857.40, but that assuming that Green was domiciled elsewhere than in Florida, the amount of estate taxes due and owing to Florida would be $29,375.72 (2704); that but for the institution of this suit in the Supreme Court of the United States they would have attempted to effect the collection of a domiciliary tax out of the property of the Green Estate wherever they could find it, as provided under their statutes (2705).

Cary D. Landis testified that he was the Attorney General of the State of Florida; that in so far as the State of Florida is concerned, under the taxing laws of the State of Florida, if it is finally determined by the Courts, in accordance with the determination which Florida has already made, that Colonel E. H. R. Green died domiciled in the State of Florida, then Florida will endeavor to assess an estate tax in accordance with the figures heretofore testified to here by Mr. Butler upon all property wheresoever the same may be found, and Florida will, accordingly, assert a lien in furtherance of the collection of such tax on all property wheresoever situated (2705-6).

Thereupon counsel for Texas gave in evidence Tex. Ex. No. 344 (2711), being a Summary of the various amounts claimed by the respective States for estate or inheritance taxes based upon a summary of the appraised value of the Estate as heretofore given in evidence and in addition thereto, a Statement with respect to the present condition of the Estate after all claims are allowed for, which is in the words and figures following:

"Estate of E. H. R. Green

Gross Estate

Real Estate and Tangible Personal Property

New York:			
Real Estate	None.		
Personal Property (tangible)	$1,583,221.82		
		$1,583,221.82	
Massachusetts:			
Real Estate	$128,000.00		
Personal Property (tangible)	2,370,707.42		
		2,498,707.42	
Florida:			
Real Estate	$162,500.00		
Personal Property (tangible)	59,776.80		
		222,276.80	
Texas:			
Real Estate		2,220.00	
Vermont:			
Real Estate		6,500.00	
Total Real Estate and Tangible Personal Property			$4,312,926.04
Intangible Property			35,831,303.69
Gross Estate			$40,144,229.73

Deductions

Debts		$912,133.29	
Administration Expenses to date	$1,319,760.78		
Estimated Future Administration Expenses:			
Executors' and Administrators' commissions	1,275,000.00		
Other Administration Expenses	500,000.00		
		3,094,760.78	
			4,006,894.07
Net Estate			$36,137,335.66

Estate and Inheritance Taxes

Domiciliary Taxes Claimed by States:		
Texas	$4,685,057.73	
Florida	4,663,857.40	
Massachusetts	4,947,008.59	
New York (New York tax calculated on a net estate of $32,879,259.09	5,910,301.80	
Total Domiciliary Taxes claimed by States		$20,206,225.52
Estate Tax, United States of America		17,520,987.93
Total Domiciliary and Federal Taxes		$37,727,213.45
Net Estate		36,137,335.66
Deficit		$1,589,877.99"

(2712-13.)

THOMAS J. MCCANN, a resident of New Bedford and a member of the Fire Department of that City, testified that during 1930, as the result of a request from St. Luke's Hospital, he went to Round Hill about July 31, 1930, was taken up to Colonel Green's bedroom and gave him a blood transfusion of about a quart; several times later that year he saw Green and about two or three months afterwards he saw him in front of Kelleher's Drug Store in New Bedford and Green called him over and inquired about the state of his health and witness inquired about his and asked him how long he intended to stay; he replied "Not very long; I only come here on account of my health and I am going South pretty shortly" (2715-17); that he saw him two or three times again the same year and on one of those occasions, witness expressed curiosity as to how he got the title of "Colonel" and he told him he was a Colonel on the Staff of the Governor of Texas and witness said he could not understand how a rock-ribbed Republican like him could get such a position in Texas and Green said "That's something you don't understand; I belong to Texas, I make them or break them down there; I can get pretty near anything I want" (2718).

On cross-examination by counsel for Massachusetts, witness testified that on one occasion Green told him he was grateful that he gave him the blood and said he would like to do what he could for the people of New Bedford and he mentioned that the activities at Round Hill were for the people of New Bedford; this remark was made in connection with his expression of gratitude for what witness had done for him (2720).

HAROLD WINSLOW testified that he was a lifelong resident of New Bedford and was City Auditor; in 1922, he was Chairman of the Republican City Committee; that a vacancy occurred in the Congressional Office due to Congressman Walsh accepting a Judgeship in the Superior Court of Massachusetts and witness called upon Green, with the knowledge of some other members of the Committee, in connection with that vacancy and told him the Committee and a good many other people were anxious to have him consider being the Republican candidate for Congress from that District and felt sure if he would run he would receive the nomi-

nation which was equal to an election; that they all knew he had been a staunch Republican down in Texas (2724-5); that Green was well known around New Bedford and would have had no trouble being elected; he said, "It is a very great honor; they never offered me that in Texas, probably because if they gave me the Republican nomination I would get licked anyway; but it is impossible for me to do so because I am a resident of Texas;" witness said, "Well, Colonel, that can be easily changed—all you have got to do is to go in your car down to the Town Hall and declare your residence in Massachusetts" and he looked at me and smiled and said, "It would cost me a great many times more than I would ever get for my salary as Congressman;" this was practically all the conversation and showed he did not care to change (2725). Subsequently, witness became Postmaster of New Bedford and around 1927, '28 or '29, Congressman Gifford brought a delegation of Congressmen from Washington to New Bedford to study the tariff needed by the mills. Witness took them to Green in the afternoon and later to the club for dinner; among the delegation was a Congressman from Texas and Green seemed to be very much interested in him and very pleased to meet some Congressman from his own State (2727).

G. LeRoy Bradford, of Fairhaven, Massachusetts, near New Bedford (2732), testified that in the late Summer of 1925, when he was employed by the "Mercury," the Managing Editor sent him to interview Green about a movement by some of the residents of Dartmouth to elect him a Library Trustee or to some honorary position and Green "grinned" and said, "It would be rather strange if they elected a legal resident of Texas to an office up here" (2734).

On cross-examination by counsel for Massachusetts, the witness testified that Green knew he was a newspaper man; witness did not know of any desire on Green's part that in all publicity he be described as of "Terrell, Texas," but heard him frequently refer to Terrell, Texas, in newspaper interviews (2735).

On cross-examination by counsel for Florida, the witness testified that Green also spoke of Star Island, Florida; witness was talking to him about the cup that he was going to offer for the races in the New Bedford Harbor and Green

said, "The fellows down home get a great kick out of the outboard races" (2735); he was then talking about Star Island, where the original cup was made (2736). On another occasion, after the arrival of a hydroplane from Miami, designed by a Miami man, and Mayor Ashley was prevailed upon to go up in it, Green said, "The plane came from down home" (2737).

JOHN NEWINGTON testified he had been engaged in the electrical supplies business in New Bedford since 1921; that he first met Green the middle of 1921 or 1922; there was a local broadcasting station being established here and he called on Green at Round Hills to arrange a schedule to eliminate interference, but was unsuccessful (2738-42); the conversation led to Green purchasing a small electric car that would pass through the doors of his house (2742). The invoice for this car was given in evidence as Tex. Ex. No. 345 (2744-5), and also a photograph of the car, with Green in it, was given in evidence as Tex. Ex. No. 346 (2746). Witness continued to sell him until 1928 or 1929; Green would visit his shop and witness would go to Round Hills; he sold him supplies for many apparatus, including a complete laundry equipment for his Miami, Florida home (2748); that in the course of their acquaintance there were frequent references to his different domiciles and he made reference to Florida, Massachusetts and Texas as his "home" and told witness he was a legal resident of Terrell, Texas; in the course of a casual conversation with him, Green said he was selected for a high political office in Texas and that he paid his poll tax there (2749); that he was a citizen of the State of Texas; that he wanted to operate his radio station while he was on the ground—during the season while he was here—and the Government would not allow him to operate part time and hold his license (2750); that during the years he dealt with Green, the latter used the South Dartmouth place as a Summer home and outdoor laboratory; that he used the words "proving ground" quite frequently in connection with his activities around there (2752).

On cross-examination by counsel for Massachusetts, witness testified that his relations with Green were both business and personal and he spent many evenings with him; that he held up to him as an example of electric efficiency a

man named Garrity in Texas whom he thought a great deal of (2756); that Green used the word "home" in connection with Round Hills when he had the Neon sign put on top of his house there; he said he wanted it for the top of his home; when he put in the ventilating system he stated he wanted it for his home there (2758).

On cross-examination by counsel for Florida, the witness testified that Green, when he was building his Miami home, told him he was building his home there so he could eventually retire there due to climatic conditions; his statements indicated that he was building a beautiful home where he expected to wind up his days; that the electric laundry for this Miami house cost about $16,000 (2761); that his interviews with Green dropped off somewhat after 1928; he was obliged to discontinue the radio and later his interest in these various activities there abated (2762); he was building up his home in Florida while his activities in South Dartmouth were declining (2763); he showed witness the plans of his Florida house, which was of Spanish architecture, and he planned to spend three-quarters of a million dollars there; he spoke of it in some detail and wanted witness to go down there and put in the electrical equipment for him (2764); he stated the airport was a disappointment to him (2765); he said New York was the place where he transacted his business while in transit between Massachusetts and Florida (2767). The witness further testified in response to questions by counsel for Massachusetts that his conversations with Green ceased about 1929 (2770).

Counsel for Texas gave in evidence as Exs. Nos. 348 and 349, photostat copy of letter from Green, 111 Broadway, New York City, June 8, 1921, to the Scientific American Compiling Department, New York City, transmitting a biographical sketch of Green for the Encyclopedia Americana, corrected in his handwriting (2774-76), reading: "Green, Edward Howland Robinson, American capitalist; born in the Langham Hotel, London, England, 22 Aug. 1868, son of Edward Henry Green and Hetty Howland Robinson. His earliest paternal ancestor in America was Percival Green, who with his wife, Ellen, came to New England from London in 1635 and settled in Cambridge, Mass. Mr. Green's mother was descended through her father, Edward Mott Robinson, from Rowland Robinson, a native of Cumberland County, England, who came to America in 1675 and settled in Rhode Island, and through her mother, Abby

Slocum Howland, from Henry Howland, who came to America in 1621 and settled in Dartmouth, Mass. Mr. Green was educated in the public schools in New York City, the high school at Bellows Falls, Vt., and Fordham University, class '88. He then studied law, paying special attention to the statutes pertaining to real estate and railroads. After being admitted to the bar he identified himself with his mother's properties, commencing as a clerk in the office of the Connecticut River Railroad. He was 21 years of age when the Ohio & Mississippi Railroad's stockholders elected him a director and president. In 1893 he visited Texas and purchased an interest in the Houston & Texas Central Railroad, then one of the important railroad systems of that state. When he was 24 years of age he was elected president of the Texas Midland Railroad, and at that time was distinguished as being the youngest railroad president in the United States. Just at this time the Texas Central Railway was placed in the hands of receivers, and he acquired the northeastern division of that road, reorganized it and made it part of the Texas Midland Railroad. He then applied himself to gaining a knowledge of the railroad business from the ground up and by his energy has made it the model road of Texas, and at the present time it is one of the most valuable pieces of transportation property in the South-west. He has introduced many improvements, among others, he extended the road so as to connect it with trunk lines, brought the equipment thoroughly up-to-date and was the first to introduce electric headlights for locomotives in Texas. He is now one of the principal owners of the Texas Midland Railroad. He was also connected with the merging of the National Bank of Dallas, American Exchange National Bank and the Exchange National Bank into the American Exchange National Bank of Dallas. He was commissioner of the St. Louis Exposition in 1904. Mr. Green makes his residence in Terrell, Tex., and has entered actively into politics in that state. A staunch Republican, he became the party's candidate for governor and was a delegate to national conventions. He was chosen chairman of the Republican State Committee. Governor Colquitt of Texas appointed him Colonel on his staff in January 1911, and he was reappointed on 16 Nov. 1912. He is director in many financial institutions in Texas and the East, among others being the Seaboard National Bank, New

York Produce Exchange Safe Deposit & Storage Company, the American Exchange National Bank of Dallas, etc. etc. A few years ago at the request of his mother he came to New York to assume the financial responsibilities so long borne by herself, and at her death, on 3 July 1916, he became sole trustee of the Hetty H. R. Green estate. He takes a keen interest in outdoor sports, fishing and yachting. In October 1916 he purchased the yacht United States on which he expended large sums for alterations, after which it was said to be one of the largest and handsomest boats afloat. He is a devoted tarpon fisherman and organized the first tarpon club in Texas. Another hobby is flowers. In Dallas he is interested in a huge nursery where everything from a pear tree to an American beauty is grown. He early became interested in aviation and organized an aviation club. He is a lover of art, music, literature, science and the drama. He has one of the best collections of first editions of great authors in the United States, and is considered to be one of the five largest stamp collectors in the world. He belongs, among others, to the following clubs and associations: Union Aero Club of America, New York Athletic, Indian Harbor Yacht, Columbia Yacht, The Atlantic Yacht, New Bedford Yacht, Dallas Club, Aerial League of America, New England Historic Genealogical Society and the Chamber of Commerce of New York. He married on 10 July 1917 Miss Mabel Emerson Harlow, of Highland Park, Ill., daughter of the late Capt. George H. Harlow of Gloucester, Mass. Captain Harlow used to own a fleet of fishing boats which sailed between Gloucester and the fishing banks off Newfoundland. Mr. and Mrs. Green spent their honeymoon on board the yacht United States. They visited 'Round Hills,' the ancestral Howland farm at South Dartmouth, Mass., and were so charmed with the picturesque location that Mr. Green decided to erect a house there where he expects to spend a part of each summer" (2776-2780).

Also, as Tex. Ex. No. 350, a letter from Green dated June 8, 1921, to Joseph D. Sawyer, of The Century History Company, Inc., New York City, reading, "I enclose herewith information concerning my American Ancestors, also a short biographical sketch of my life, which I think will give you all the information you are seeking. I note that before any use is made of the material you will notify me so that

I may be in a position to give my assent to its publication" (2781), and enclosures therewith, as Tex. Exs. Nos. 350-A and B, the former being substantially the same as the previous sketch for the Encyclopedia Americana (2783-7).

ELAINE M. CHINN, of New Bedford, Massachusetts, testified that she was employed by Green in 1934, as office manager, remained in his service until the time of his death and is still employed by the Estate; that she took care of the pay rolls, checked the bills and had a power of attorney to sign pay checks in connection with the Round Hills house (2789). The witness identified certain applications for registration of motor vehicles dated January 1, 1936, in which after the words "Massachusetts residential address" was typed "Round Hills, South Dartmouth, Massachusetts," but no "legal address" for non-resident was given (2790; Mass. Ex. No. 356); that the witness succeeded Miss Minna Cayton when she entered Green's employ in 1934 and received from her certain written instructions regarding Green's residential address; that this paper directed that "Terrell, Texas," was to be put on papers for his legal residence (2792); that witness did not make out the applications for registration, Mass. Ex. No. 356; they were made out by the Insurance Company; the year she made them out "Terrell, Texas," was put in as the legal residence (2793).

GEORGE JOYCE, a resident of New Bedford, Massachusetts, testified that he was employed by Green as house engineer from the Summer of 1923 up to the time of his death at the Round Hills house; that as a rule Green would spend at Round Hills the portion of the year from July 1st to some time in December; there was some variation in the time he left and for a few years he came in June (2795); that years ago he would leave for New York for awhile and then for Florida; when they left, witness would go around and close up the house, put up the storm shutters, cover the furniture and pictures with cloths, and the silverware would be put in the safe and the maids put away the linen (2796); that the master kitchen would be closed and the utensils put away; the draperies and hangings put in cloth

bags but the rugs were left down; during the months Green was away the house would be kept heated, for the seven persons remaining there to keep the pipes from freezing and the paint from scaling off (2797-99). Witness further testified, in answer to questions by counsel for New York, that towels were placed over the windows to keep out the water when there was a rain storm from the Northeast (2802); that when Green left in the Fall, he would take with him about 40 trunks and bring them back in the Spring.

JOSEPH EPSTEIN, of New Bedford, Massachusetts, a newspaper reporter (2806-8), testified that he knew Green and had interviewed him on various occasions and heard him discuss his residence in 1929-30 and in 1933 or 1934 (2808); the 1929 conversation was the day of the market crash in September; witness drove down to interview Green and found him near the swimming pool; Green picked up a telegram and said, "What do you think of this damn little fool down home—wants my permission to get married"; that his recollection is the telegram was from Dallas, Texas (2809). In 1930 he had a conversation with him at Star Island, Florida, in the study of his home there and asked him when he was coming North and he said he did not know when he was going North because he might "go home" before starting for the North; he did not mention Texas but witness took it for granted he meant Texas; he understands he did not go to Texas that year (2810); that in the conversation in 1933 or 1934, he asked Green why he did not run for Mayor of New Bedford and Green said, "I cannot run for Mayor, I am a resident down in Texas" (2811). In response to questions by counsel for New York, the witness further testified that Green had told him the doctors had said he must be in the house at four thirty because the moist air of New Bedford was not beneficial to his health; that Green did not take any interest in the social life at South Dartmouth (2819); that during the latter part of his life he asked witness not to mention his departure from New Bedford for Florida because there was a subpoena out for him in New York (2820); that on one occasion when he went to New York, Green discussed with witness what he thought of charging an admission fee for his beach at South Dartmouth to be given to charity; that when Green arrived at New Bed-

ford he came in a private train and was met by a Press Committee and photographers (2820).

Counsel for Texas thereupon gave in evidence Exs. Nos. 351 to 380, miscellaneous correspondence between Green and W. P. Allen, of Terrell, Texas, and others regarding various matters having a bearing upon the contentions of Texas (2822). In Tex. Ex. No. 351, a letter to said Allen, dated March 6, 1931, Green said, "At the present time I am trying to make up my mind just where to go; I have found that this year Florida is not the proper place for a fellow in my condition to remain. We have had nothing but cold spells and bad weather ever since we arrived, etc." (2823-4). In another letter to said Allen from Green, dated April 13, 1931, Tex. Ex. No. 366-A, he said, "I was glad to receive your letter of April 9th. I note what you say about my going to Marlin, but can only say that I do not know even yet where we are going. * * * The weather here continues rotten, rainy and chilly. Even the old settlers say they have never seen anything like it before" (2855).

In Tex. Ex. No. 369, from Green at New York City to said Allen, dated June 9, 1930, Green, in acknowledging a letter from the Federal Reserve Board at Washington granting him permission to serve as Director of certain Banks in Texas and New York, said, "My opinion is that the Federal Reserve Board knew what they were doing when they sent this letter to Terrell. Isn't a man's home town the proper place to receive such communications? If it isn't, where is?" (2861).

Luke Smith testified that he was a resident of New Bedford and an attorney at law; that he had made an examination of the Land Records of Bristol County, Massachusetts, for deeds in which the name of Colonel Green appeared and had found 32 such instruments; that in two-thirds of them Green, as grantor, was designated as of Terrell, Texas, or Kaufman County, Texas, and where such designation was not given no other appeared (2881-5).

Tex. Ex. No. 316, a photostat copy of the Bill of Sale from Edward H. R. Green, of "Terrell, Kaufman County, Texas," to the Round Hills Radio Corporation of certain radio buildings, equipment, etc., in November, 1923, was given in evidence (3790).

Thereupon, by agreement of counsel, Tex. Exs. Nos. 321,

326 and 327 were copied into the record pp. 3809, *et seq.* (see Digest 109).

No. 321 being the appraisal of the tangible personal property of the Estate of Green in the residence at Round Hills, South Dartmouth, Massachusetts; No. 326, the appraisal of the Round Hills Estate and No. 327, the Report of the appraiser of the Star Island property (p. 4052)—appraisers' history of Star Island (p. 4107); description of Star Island by appraisers (pp. 4110-12).

Special counsel for New York announced that the case involving the transfer tax on the Estate of Hetty Green was reported in 99 Misc. N. Y. 582; affirmed by the Appellate Division, First Department 179 App. Div. Reps. 890, without opinion, and that the case did not go to the Court of Appeals (4121); that the other case involving the taxability of the Hetty Green Estate for inheritance tax purposes as a nonresident, was reported in 231 N. Y. 237 (4121).

At the hearing in Miami, Florida, April 11, 1938, counsel for Texas gave evidence tending to prove:

WILBUR K. POTTER, on being recalled, testified that he went to Round Hills House from Lake Placid, New York, with the remains of Colonel Green, leaving there in the morning of June 10, 1936, and found in the mail handed to him a written notice from the Commissioner of Taxation, Henry F. Long, of the Commonwealth of Massachusetts, for the rendition of an income tax to that State; during the previous years when employed by Green, no such notice had been received from the Commonwealth of Massachusetts (7164-5).

On cross-examination by counsel for New York, witness stated that the notice had been turned over to counsel for the Estate of Colonel Green; it was the usual notice to file an income tax (7166).

Counsel for Texas gave in evidence the following Exhibits:

No. 384, a letter from Charles W. Pierson, New York, March 18, 1924, to Green, and attached clipping from a Miami newspaper referred to in the letter relating to the victory of his power boat at Havana, Cuba (7169). The newspaper clipping was headed "Texan's Power Boat

Scores in Havana"—"Colonel Green's Mary Triumphs in Sweepstakes" (7170).

Ex. No. 385, a bill of sale dated March 31, 1926, from the Fogal Boat Yard to Green, described as "of Galveston, Texas" (7172). No. 386, a list of Companies from which Green received dividends during the year 1935, from the files of Green and headed "E. H. R. Green, Terrell, Texas" (7177).

No. 387, extract from deposition of Colonel E. H. R. Green taken at Miami Beach, Florida, March 29, 1935, in the Circuit Court of the Eleventh Judicial Circuit for Dade County, Florida, Common Law, No. 14540, in the case of Waldemar Knudsen, plaintiff, vs. E. H. R. Green, defendant, taken before J. E. Kelly, Notary Public, at the residence of Green, Star Island, Florida, in which Green said (7188-9):

By Mr. McPherson:

"Q. You are Colonel E. H. R. Green?

A. I am.

Q. You are the defendant in this suit?

A. I suppose so.

Q. Where is your residence, Colonel?

A. Terrell, Texas.

Q. You maintain a winter home in Miami Beach, Florida do you not?

A. I come here every winter, yes.

Q. And you have a summer home in New Bedford, Massachusetts, do you not?

A. South Dartmouth.

Q. Will you state for the record, Colonel, about how much time you spend at these several places of abode each year as a matter of custom?

A. Well, as to the residence part, for about 30 years I have lived in the State of Texas, in the town of Terrell, and built a lot of railroads down there, and that gave me the residence of Terrell, Texas, and I was Chairman of the Republican Party there for eight years, and mixed into politics, State and National, and whenever I tried to get away they would turn around and get after me and have delegations wait on me, and I still claim it, and they appointed me the other day as Commissioner of the Centennial they are going to have next year. I have been buying their half dollars.

Q. How many months out of the year, as a rule, do you spend in Massachusetts.

A. Well, it is about six.

Q. Six months.

A. Six months.

Q. And you spend substantially the remaining six months of the year in Miami or Miami Beach?

A. Well, between Miami Beach, New York and either Asheville or Lake Placid."

No. 388, letter from Dade County Tax Assessor to Green, April 3, 1933, acknowledging letter of Green of March 31, 1933, enclosing tangible personal tax return on the same basis as the preceding year (7192-3), in which he said:

"I wish to acknowledge receipt of yours of March 31st, enclosing tangible personal return on the same basis as last year, which is satisfactory to the writer, and you will be assessed accordingly.

However, under our law, inasmuch as you are not a citizen of this State, you would not be subject to the intangible tax except on bank stocks, as bank stocks are assessible only at the location of the bank, and therefore I will assess against you the stock owned on the basis that we have accepted from the bank as a fair value of the stock. It is, therefore, unnecessary for you to file an intangible return unless you care to do so" (7193).

No. 389, certificate of Carl Holmer, Jr., Supervisor of Registration, Dade County, Florida, that he had made a careful search from the year 1926 to and including the year 1936 in the precinct of Dade County, in which Star Island is located, and had not found that Green ever registered as an elector in said precinct and County during said period (7194).

No. 390, certificate of the City Clerk of the City of Miami Beach, Florida, certifying that he had made a search of the records of the City from 1924 to 1936 and found that Green never registered as a voter in the City of Miami Beach, Dade County, Florida (7195).

No. 391, letter from Green to Felix Rackemann, Boston, March 20, 1923, in which he said (7199-7200):

"First, I want to offer you an apology. On account of being taken sick in New York, the doctor rushed me down

to Florida, and the excitement of the long trip is responsible for the delay in answering your letter of February 13th. We arrived here in Miami on the 10th and found the weather very warm. At no time has it been under seventy and in the middle of the day it is around eighty to eighty-two. There is a big difference from cold old New York. The very bad cold I had in New York has entirely disappeared. I have also improved in walking and think a great deal of this climate.

Coming back to the Murray Company business; I am returning herewith the draft of the trust agreement with the following notations:

The town of Terrell is spelled T-e-r-r-e-l-l and it is located in Kaufman County, Texas. Dallas is situated in Dallas County, Texas. I would suggest that you make two trusts, one adapted to my sister and one adapted to me, my sister's trust to be called the Greenwich Trust and mine the Terrell Trust. My sister's name should be spelled W-i-l-k-s, and her initials are H. Sylvia A. H. G."

No. 392, photostat copy of the Terrell Trust made April 9, 1923, at Terrell, in the County of Kaufman, State of Texas, between Green, of said Terrell, as Settler, and Walter P. Allen, of Terrell, and Hetty S. A. H. G. Wilks, sister of said Green, as Trustees, etc. (7202-11).

No. 393, photostat copy of an amendment to said Terrell Trust executed in April, 1933, by Green, of Terrell, Texas, and the aforesaid Trustees (7211).

No. 394, letter from Green to said Allen, December 17, 1923 (7214), in which he said:

"I expected to see you up here this summer, and I tried to get down in November, but my knee and wrist bothered me with that pain, and I am only able to navigate around the room. I am going to try to get away to Florida before long and see if that will help me again a little. I am glad to see that Murray Company is going to resume dividends the latter part of December." (7215).

No. 395, copy of resolution of Directors of the American National Bank of Terrell, Texas, December 30, 1927, thanking Green for the present of a clock and expressing their appreciation of his remaining on the Board of Directors during so many years (7217).

No. 396, letter to Green, Miami Beach, March 30, 1928, from A. D. McDonald, Southern Pacific Lines in Texas, regarding the delivery of the stocks and bonds of the Green Estate, Incorporated, in the Texas Midland Railroad, and stating that he had delivered the check to the representatives of the Estate for $2,250,000 and asking him to remain as President and Director (7223).

No. 397, Green's reply, April 4, 1928, in which he said (7226-7):

"I note the arrangements you have made for having me remain with the Texas Midland as President and Director, and also for becoming a Director of the Texas and New Orleans Railroad Company. I deeply appreciate the confidence shown by this action, and it is with pleasure that I join the Southern Pacific Family, to help out in any way I possibly can to straighten out any 'kinks' that may appear in the records, or to make my thirty-five years' experience in Texas beneficial to the Southern Pacific. However, as you are probably aware, my physical condition will not permit of me giving the road any active service. With this understanding, I desire to accept, and assure you of my appreciation for, the courtesies extended in your letter."

No. 398, letter from said McDonald to Green, May 10, 1928, advising him that at the annual meeting of the stockholders he was elected President and Director (7228).

No. 399, certificate of the United States Acting Comptroller of the Currency, August 4, 1936, of oaths taken by Green as Director of the Chase National Bank, New York City, for the years 1932 to 1936 (7230). In making the offer of said Exhibit, counsel for Texas stated:

"Mr. McCraw: We offer in evidence as a Texas exhibit the oaths of office of Colonel E. H. R. Green, as director of The Chase National Bank of the City of New York, New York, for the years 1932 to 1936, inclusive. These bear the certificate of the Treasury Department dated the 4th day of August, A. D. 1936, signed by William Prentiss, Jr., acting Comptroller of the Currency, with appropriate seal.

I particularly direct the Court's attention to the first one with the blanks filled in, being in the form of an affidavit made in the state of Florida, county of Dade, wherein it is specifically said:

I, the undersigned, director of The Chase National Bank of the City of New York, located at New York, New York, being a citizen of the United States, and resident of the state of Texas, do solemnly swear, and so forth.

That is acknowledged by E. H. R. Green before a notary public on the 20th day of January, 1932.

I also call attention to the oath of director filled out and subscribed before a notary public on the 12th of January, 1933, in which the oath, taken in the State of New York, county of New York, sets forth that:

I, the undersigned, director of The Chase National Bank of the City of New York, located at New York, New York, being a citizen of the United States, and resident of the state of Texas, and so on.

Also the oath taken on the 16th day of January, 1934, in the state of Florida, county of Dade, before a notary public there, stating:

I, the undersigned, director of The Chase National Bank of the City of New York, located at New York, New York, being a citizen of the United States and resident of the state of Texas, and then it goes on.

I also call attention to the affidavit made on the 15th day of January, 1935, by E. H. R. Green, in the state of Florida, county of Dade, in which the same statement appears under oath.

Also the affidavit made on the 17th day of January, 1936, by Edward H. R. Green, in the state of Florida, county of Dade, in which the same statement as to his being a citizen of the United States and a resident of the state of Texas is made" (7228-30).

No. 400, certificate of United States Acting Comptroller of the Currency, August 4, 1936, of Green's oaths of office as Director of The American National Bank of Terrell, Texas, from the years 1925 to 1936, inclusive (7245), and in making said offer, counsel said:

"Mr. McCraw: We offer in evidence the oaths of office as a director, taken by E. H. R. Green with respect to the American National Bank located in Terrell, Texas.

These certificates are accompanied by a certificate of William Prentiss, Jr., acting Comptroller of the Currency, executed on the 4th day of August, 1936, the oaths of office covering the period of E. H. R. Green as director of the American

National Bank of Terrell, Texas from the years 1925 to 1936, inclusive.

I call particular attention to these portions of the oaths of office:

One dated the 5th day of February, 1925, an affidavit made by E. H. R. Green in the state of Florida, county of Dade, before Charlotte E. French, a notary public, in which appears the statement:

I, the undersigned, director of the American National Bank located at Terrell, Texas, being a citizen of the United States, and resident of the state of Texas, do solemnly swear, and so forth.

Then the affidavit of E. H. R. Green subscribed and sworn to before J. P. Roach, Jr., on the 20th day of January, 1926, in the state of New York, county of New York, in which Colonel Green swears to the same statement with respect to his residence in the state of Texas.

Also the affidavit of Colonel Green executed on the 25th day of January, 1927, in the state of Florida, county of Dade, before Charlotte E. French, a notary public, in which a similar statement is made with respect to the Texas residence of Colonel Green.

Also the affidavit of Colonel Green made on the 20th day of January, 1928, in the state of Florida, Dade county, before Charlotte E. French, a notary public, in which the same statement is made as to the Texas residence of Colonel Green.

Also a similar affidavit made by Colonel Green on the 18th day of January, 1929, before Charlotte E. French, a notary public of the state of Florida at Large, in which the same statement is made with respect to Colonel Green's residence in Texas.

Also an affidavit executed before Charlotte E. French by E. H. R. Green on the 22nd day of January, 1930, made in the state of Florida, county of Dade, setting forth the same affirmation with respect to Colonel Green's Texas residence.

Also an affidavit executed on the 19th day of January, 1931, before Charlotte E. French, a notary public in Dade County, Florida, setting forth the same statement with respect to Colonel Green's residence in the state of Texas.

And as a part of this exhibit the affidavit made by E. H. R. Green on January 27, 1932, in Dade County, Florida, before F. Louis Smith, a notary public, setting forth the

same statement with respect to Colonel Green's Texas residence.

In the same exhibit, an affidavit of E. H. R. Green executed on the 27th day of January, 1933, in Florida, Dade County, before H. H. Culbertson, a notary public, setting forth that Colonel Green is a citizen of the United States and a resident of the state of Texas.

Also another affidavit executed on the 16th day of January, 1934, by Edward H. R. Green, in the state of Florida, county of Dade, before F. Louis Smith, a notary public, setting forth the same statement with respect to Colonel Green's Texas residence.

We also call attention to the affidavit of E. H. R. Green executed on the 15th day of January, 1935, before H. H. Culbertson, in the state of Florida, county of Dade, with respect to Colonel Green's residence in the state of Texas.

Also an affidavit of Colonel Green executed on the 22nd day of January, 1936, before E. E. Stockwell, a notary public in Dade County, Florida, setting forth that Colonel Green is a resident of the state of Texas" (7242-45).

No. 401, certificate of said United States Acting Comptroller of the Currency, August 4, 1936, of Green's oaths as Director of the Seaboard National Bank of the City of New York for the years 1925 to 1929, inclusive (7272), and in connection with said offer, counsel made the following statement (7270-1-2):

"Mr. McCraw: Texas offers in evidence the oaths of office of E. H. R. Green as a director of The Seaboard National Bank of the City of New York, New York, for the years 1925 to 1929, inclusive.

These copies of oaths of office, which are photostats of the originals, bearing the certificate of William Prentiss, Jr., Acting Comptroller of the Currency, under seal of the Comptroller of the Currency of the Treasury Department of the United States, in which Colonel Green designates himself in the various oaths of office as a resident of the state of Texas, and we call particular attention to the oath taken by Colonel Green in the state of Florida, County of Dade, before Charlotte E. French on the 5th of February, 1925, in which he makes that statement as to residence.

Also the affidavit made on the 20th of January before J. P. Roach, Jr., a notary public in New York County, New

York, in which he makes the same statement with respect to his being a resident of the state of Texas.

Also the affidavit of E. H. R. Green dated the 14th day of January, 1927, made before J. P. Roach, Jr., to the same effect with respect to Colonel Green's residence.

Then there is the affidavit executed by Colonel Green on the 11th day of February, 1928, in Florida, Dade County, before E. L. Jones, a notary public, in which is contained a similar statement as to the residence of Colonel Green; and

The affidavit of E. H. R. Green made before E. L. Jones, a notary public in Kaufman County, Texas, on the 14th day of January, 1929, in which Colonel Green sets forth that he is a resident of the state of Texas." (7270-1-2.)

F. Lowry Wall, testified that he had been President of the Miami Beach First National Bank since 1930 and had been connected with the Bank since 1922; that he first met Green in 1924 or 1925; he became a stockholder of the Bank in 1928; on several occasions Green told him his legal residence was in Terrell, Texas; in all his conversations with Green, he designated Round Hills as his Summer home (7284-8).

On cross-examination by counsel for Florida, he testified that Green bought 100 shares of stock in his Bank in 1928 and was living at Star Island at the time; he also became interested about the same time in the First National Bank of Miami, buying about the same number of shares (7290-2); witness never visited him at his home but has attended several parties there given by Mrs. Green and saw the first floor of the Star Island house (7292-3); it was beautifully furnished, like the other larger homes, and the grounds were well kept; they were considered very fine in every way; Green would come down about Christmas and remain until about May 1st or 10th (7294); he was a good contributor to the different civic organizations and community projects in Miami; he received letters of solicitation from different organizations and asked witness if they were worthy (7295-6); Green said Terrell, Texas, was his domicile and made no differentiation between legal residence and domicile; he did not tell him he was living in Texas but said he spent his time in Massachusetts, New York and Florida (7298-7300).

On cross-examination by counsel for Massachusetts, he testified that Green was a member of the Surf and Bath Clubs of Miami Beach, social organizations for the benefit of Winter residents, which were open from about December 1st to May 1st and witness has seen Mrs. Green but never Colonel Green there; Green told him what he was doing in Massachusetts, etc., and that he didn't go there until after July 1st because of the tax rule "but he always laughed about it" (7304); on the occasion when witness attended parties at Star Island he did not see Green (7305); he communicated with him at South Dartmouth and sent him specimens of new National currency—as much as $20,000 to $30,000 a month or about $150,000 all together; Green told him about his projects at Round Hills in numerous conversations but he does not remember the details (7306-8).

On cross-examination by counsel for New York, witness identified N. Y. Ex. No. 223, signature card of Green in the Miami Beach First National Bank, April 11, 1927, containing the address, "111 Broadway, N. Y." and same was given in evidence (7309); he stated that Green probably told him on several occasions about not going to Massachusetts until the 1st of July on account of taxes, it was a joke with him (7310-11); Green told him his mother gave him $1,000,000 when he was twenty-one and thirty days to invest it and called him back home to tell him whether he was right or not (7311); Green said he invested it in a few shares of every Bank in Texas (7312).

Dr. Charles Frederick Roche, of Miami Beach, testified that he first met Green in 1934 in consultation with one of his attending physicians; he was an invalid and found him suffering from heart trouble and pernicious anemia; at times he visited him daily and then two or three times a week during a period of two years (7315-18); Green told him he had lived the greater part of his life in Texas and his business interests largely were there; he said his residence was in Terrell, Texas (7319), and discussed his friends there more than once; he was in Miami Beach in the Winter season, from November until April or May; in the Summer of 1934, he went to Massachusetts to his Summer home; in 1935, he went to Marlin, Texas; in 1936, to New York State; witness always considered Dr. Buie, of Marlin, as the chief medical advisor and he

and witness consulted about the Colonel's movements when it came to the time for him to leave and were largely guided by Dr. Buie's advice and wishes in the matter (7320); in 1936, Green said, in substance, primarily he would have preferred to have gone to Texas but he realized from his visit there the previous year that he could not tolerate it very well so that his next procedure was to go to some place where the altitude was not too high but where it was sufficiently high that he could live in reasonable comfort perhaps without oxygen (7324); in 1935, he expressed a similar preference and did go to Texas; he was hesitant about going to Lake Placid; he said that he was or had been, a director of the Chase Bank in New York and there was some matter that had arisen that might have necessitated his appearing before some hearing in connection with his directorship of this bank; of course, we assured him that there would be no difficulty about that; the other matter was that there was a limitation of time that he could elect to remain in the State of New York due to the fact that he told me that he wanted to keep his visit there definitely under six months, I believe, if I remember correctly (7325-26). The witness went to Lake Placid with Green in 1936 and remained several days (7327).

On cross-examination by counsel for New York, he testified that he was first called into consultation with Dr. Hotchkiss, of Miami; he cannot say that Green specifically said he had a house in Texas (7331); in 1935, Dr. Buie had come down and said Marlin would be the proper place for him and he went to Dr. Buie's sanitarium at Marlin for his health (7332); he was seriously ill when he left Miami in 1936 (7333); he was growing progressively worse and had a day and night nurse and had been under an oxygen tent before leaving for New York (7334).

On cross-examination by counsel for Massachusetts, he testified that Green's condition at the times he was called to see him was acute, he had had a hemorrhage, probably from the pernicious anemia, due to lack of certain blood constituents (7350); there was no history at that time connected with the excessive use of bromo-seltzer; through correspondence he knows Dr. Buie recommended that Green go to Texas in 1934, but he left Miami for South Dartmouth (7351); in 1935, his condition was progressively worse and as the result of Dr. Buie's advice, he went to Texas in 1935; in 1936, he was still worse and witness advised him

to go to the high altitude of Lake Placid rather than th sea altitude (7353). On cross-examination by counsel fo Florida, witness testified that from February, 1934, unti Green went North in the Spring, he saw him approximatel 50 times, making the usual practitioner's calls (7355); whe he last saw him in the Spring of 1934, he had gotten up fron bed and was able to move around; that he cannot recal whether he said anything about going to Texas that yea but it always seemed to witness that was the first place h always thought about (7357); that he never mentioned "home" by that word and never told him he had sold i 1911 the only home he had in Texas and shipped all his goods to New York, nor that he had sold practically al of his property there in 1911 and 1912 and had practically nothing left, or that in 1927 he sold the last vestige of his Railroad there (7358); that Green was then residing in his Star Island home at Miami Beach, a very palatial home as it seemed to witness, one of the finest homes in Miami Beach, with all the home comforts (7359); every time witness saw him until he died he was residing there; when he saw him again in December, 1935, his general condition was gradually sinking; witness continued to act as his physician until he left about April 30th and saw him frequently, never less than one hour and sometimes two hours; when Green was able to talk about his past life, he would reminisce about his early history in Texas (7362); in 1935, he went to Marlin primarily for treatment for his health and blood conditions and not for the baths (7363); he then went to Massachusetts and in 1936 he left his home in Florida for Lake Placid upon the combined advice of Dr. Buie and witness, where he passed away (7364).

CHARLOTTE E. FRENCH, of Miami Beach, testified that she had been employed by the Miami Ocean View Company since 1922 as secretary to the President and met Green in 1924, when he purchased three lots on Star Island from the Company; the first lot being the one with the old Yacht Club House on it (7366-8). Witness identified Tex. Ex. No. 402, a deed to the property purchased April 24, 1924, and Tex. Exs. Nos. 403 and 404, two other deeds dated February 12, 1925, covering property on Star Island purchased by Green (7370-7392).

Witness testified she was a Notary Public at this time and had been since 1923 and took a good many acknowledgments from Green; that most of the papers were filled out; that when the Company sold him the property, he said he was from Kaufman County, Texas, which was incorporated in the deed (7402-4); that Green talked about his Railroad down there; that she knew he had an office at 111 Broadway, New York City, and his papers came from there and she corresponded with it; he told her about a Summer home in Massachusetts—a big estate and an airport where he used to go and spend his Summers (7405-6); also told her about living at the Waldorf-Astoria and Sherry-Netherland, New York City, and going to Lake Placid in the Spring (7407).

On cross-examination by counsel for New York, witness testified that Green, in discussing politics, said he didn't vote in Florida; he could vote in Texas but did not say when he had last voted in Texas (7409-10).

On cross-examination by counsel for Massachusetts, witness testified that Green said he had a big place in Massachusetts, an airport, experimental station and a radio station (7412).

On cross-examination by counsel for Florida, witness testified that when she first knew Green he was living in the house boat "Colonel" anchored off Star Island, a boat with comfortable living quarters; in conversations with Green in 1928 and 1930, he told her he had voted in Texas but never said anything to her about going there to vote (7417); that the Star Island home was where Green said he ate and slept and where his wife stayed and gave parties when witness knew them (7420); that he showed an interest in the welfare of the hospitals and other civic organizations in Miami; that Star Island is an artificial island in a highly restricted residential area; that she never had any correspondence with Green in Texas and he never told her he was going there to stay in any home (7422); her talks with him related to the past (7423).

On further cross-examination by counsel for Massachusetts, witness identified Mass. Ex. No. 440, a plat of Star Island, and the same was given in evidence (7426); she further stated that her talks with Green were principally in 1928 and 1930; that from 1934 on she never came in close contact with him; that the last couple of years he was not well and did not go out a great deal (7427).

New York Evidence

At the hearing held at the Hotel Roosevelt, New Yor City, beginning January 12, 1938, counsel for the State o New York gave evidence by the following witnesses tend ing to prove:

Boothe Colwell Davis, Jr., of Plainfield, New Jersey testified that he was the Secretary of the Chamber of Com merce of the State of New York; that the printed reports for the years 1919-20 showed that Green was elected to resi dent membership December 4, 1919, and continued on the rolls of membership until his death in 1936 as a resident member (2901-3); that the by-laws then in effect provided for two classes of members—resident, those residing or do ing business in the City of New York, and all others were classed as non-resident (2903). The witness identified and counsel for New York gave in evidence N. Y. Ex. No. 11, bill rendered Green at 111 Broadway, New York City, for resident dues for the year 1936, stamped "Paid January 7, 1936" (2906-7). On cross-examination by counsel for Texas, witness testified that 111 Broadway was an office building (2909), and on cross-examination by counsel for Florida, he testified that to the best of his knowledge in the ten years he had been employed there he had never seen Green in or about the Chamber of Commerce headquarters (2909-11).

Ernestina Holcinger, a resident of New York City, tes tified that she knew Green and started to work for him in 1911; that Miss Harlow, afterwards Mrs. Green, engaged her July 1, 1911 (2913-14); she went to work at 5 West Ninetieth Street and at that time Colonel Green and Miss Harlow were living there keeping house; witness continued to work there until about 1918, after the holidays, when they moved to the Waldorf-Astoria (2915); that the Ninetieth Street house was an old-fashioned brown stone, four-story residence containing three bedrooms, a sitting room, foyer and hall, dining room and billiard room; the sitting room, foyer and dining room were on the first floor; on the sec ond floor, Colonel Green's bedroom, Miss Harlow's or Mrs. Green's bedroom and on the third floor a billiard room and guest room; on the fourth floor the servants' quarters—

three bedrooms and one store room (2917); in the basement was the kitchen, dining room for the help and laundry; during the period Green lived at 5 West Ninetieth Street he had two Japanese servants, one a cook and the other a butler and valet (2918); the furniture consisted of a dining room set, with the exception of a table (they used a card table), a few chairs in the parlor, a little couch with two settees, a piano and a couple of lamps; the house was comfortably furnished (2918); during the period witness knew Green he worked on his stamps and coins at night, sometimes played cards and at times went to shows (2918); he became interested in stamps about two years after witness went to living there (2919); that before they moved to the Waldorf-Astoria, witness saw Green every day for the first two weeks and afterwards two or three times a year when she came down to help Mrs. Green (2919); witness and her husband continued to live at 5 West Ninetieth Street as caretakers until 1928 and left because the house was demolished; at the Waldorf-Astoria, Green's apartment consisted of eight rooms, four bedrooms and sitting room, a room where he did some of his business and another room where a girl worked on his stamps—he had his stamp collection there (2920); that witness visited Round Hills twice—for one month in 1924 and three months in 1922 (2921) (but see pp. 2950, 2967, 2975); she believes the furniture at the Waldorf-Astoria belonged to the Hotel, with the exception of the piano which belonged to Green; that the furniture was very nice (2922); that Green was at the 5 West Ninetieth Street house every day between 1911 and 1918, except twice a year when he went to Dallas, Texas, once to vote and the second a business trip (2923); that Green's mother came to the Ninetieth Street house and also his secretary, Walter Marshall, came occasionally; that Green was married on July 10, 1917, to Miss Harlow; lived at the 5 West Ninetieth Street house until the time of the marriage; they left for Chicago to be married and when they returned, they went to the yacht "United States"; witness and her husband were on the boat on this trip; they cruised about Long Island Sound for five or six weeks (2924-25); Green had put a new hot air furnace in 5 West Ninetieth Street; this house was one house from the corner of Central Park West on the north side of Ninetieth Street: there were a lot of boarding

houses there at that time—apartment house on the corner and a garage across the street (2927); they had two Pierce-Arrow cars, one for the Colonel and one for Mrs. Green (2927); after the yachting trip, they came back to the Ninetieth Street house for a little while and then moved to the Waldorf-Astoria, taking their personal belongings, stamp collection, etc. (2929); some of the collection was left until 1928; the stamps were mounted in large books with green covers; he had them all over the room—some in the two safes, and some in the desks; he was very much interested in them (2929); the 5 West Ninetieth Street house was supplied with linen and silver (2929); while at this house, Green usually had his breakfast upstairs and after dressing he went to business about nine o'clock every morning; his office was in the Trinity Building, 111 Broadway; he returned about five or a little after, would have his dinner at the West Ninetieth Street house and spend the evening there working on his stamps, playing cards or sometimes going to shows (2931); he did not like the opera and witness went with Mrs. Green (2931); he liked comedy and had season tickets for the Palace Theater, where they had a first class vaudeville (2932). On cross-examination by counsel for Texas, the witness testified that the West Ninetieth Street place was plainly furnished; Green was never a well man; he took lots of bromo-seltzer (2934); that Green was very friendly and kind to those who worked for him; that no use was made of the West Ninetieth Street house after they moved to the hotel; that the furniture stayed there and witness and her husband remained as caretakers until it was torn down in 1929 (2934-35); that between 1917 when they moved there and the time when the Waldorf was torn down the Greens travelled a great deal; that witness does not know where they went from the Waldorf but from the Ninetieth Street house he made one trip to Texas (2936); the trips were not discussed with witness and she knew nothing about them (2937); after 1917, Green never stayed in the West Ninetieth Street house; some of the furniture was moved out the first year, the beds for the help were left (2937); never heard Green discuss where his residence was; after Green went to the hotel his condition grew worse; from 1911 on he was in a continual decline from what he said and witness observed (2938).

On cross-examination by counsel for Florida, witness testified she was first employed by Miss Harlow but worked for both of them at West Ninetieth Street (2940); that this was a residential part of New York City, although there were apartments and boarding houses and public garages around there (2941); that when she went there she found the two Japanese servants, Colonel Green and Miss Harlow; she was employed as chambermaid and took care of Mrs. Green and the second, third and fourth floors (2942); from 1911 until 1918 Green went away twice a year, in the Fall around election and in the Spring; in November he stayed away a few days and in the Spring a couple of weeks (2944); in the Fall he took Miss Harlow with him (2945); his mother visited 5 West Ninetieth Street when he was sick, and when she had the office at No. 7 next door for a short time during her illness she came over every day (2946); witness never saw Mrs. Wilks, Green's sister, there (2947); they went to Round Hills, Massachusetts, in the Summer time—that was their Summer residence—they went there about the 4th of July because Green wanted to see the fireworks and returned to the Waldorf-Astoria in October (2949-50); that before their marriage, they did not entertain at 5 West Ninetieth Street and did not live there long after their marriage (2951); they would spend the Summer at Round Hills and after witness left they had a Winter place in Florida (2951); the time witness spent three months at Round Hills was in the Summer time (2952); they had a few guests there—Mr. and Mrs. McDonough, friends of Green from Dallas, Texas, and some relatives of Mrs. Green (2953); Green was active while at Round Hills and was not sick; he drove around the place in a little car, made a lot of improvements, had an air field and radio station (2956); that the neighbors complained of the radio being too noisy and he had to have the horns cut down; that a lot of young fellows were there studying radio; witness does not know where they slept (2957-8).

On cross-examination by counsel for Massachusetts, witness testified that Mrs. Green bought a couple of chairs for the sitting room after witness got there but the other furniture was installed; they had lived one year in New York before witness was employed by them (2960-1); the furniture was moved from 5 West Ninetieth Street on three occa-

sions between 1918 and 1928—some of it after the building of the house at Round Hills (2963); the old paintings were first sent up about 1921 by Mr. Van der Putten, the decorator for the Round Hills house (2964-6); afterwards the beds and carpets were taken up and in the Summer of 1928, just before the house was demolished, the rest of the things were taken; trucks came from New Bedford to get them (2966-7); in 1922, when witness was at Round Hills, she saw in the main hall some of the paintings that had gone up (2968); does not remember seeing any picture of Mrs. Hetty Green at Round Hills but recalls a small picture of her that Mrs. Green had in her bedroom which she took with her to the Waldorf; all of the contents of the West Ninetieth Street house witness later saw at South Dartmouth; the books went the last time they moved furniture but witness does not know where they went but they were the things that went in the New Bedford trucks (2969); in 1921, part of the dining room set was taken; the dresser was left a long time because it had the silverware in it; the china closet and some of the parlor and sitting room furniture was taken—the choicer furniture went up (2969); that after the marriage and cruise on the yacht around Long Island Sound, witness left them and they went to Massachusetts, later coming back to New York and went on a cruise from there, returning just before Christmas (2971); that from the time of the marriage in July, with the exception of a couple of weeks at the house, they were in the yacht; they spent Christmas in the West Ninetieth Street house and after New Year's Day 1918, moved from there for good (2972); for a few weeks after they left, witness helped them at the Waldorf and also when they came from Round Hills and before they went—twice or three times a year, usually around the holidays and in June (2973-4); that by travelling around witness meant they were away from New York; that the Colonel travelled a lot; it was hard for him to live any length of time in a place since he had so many homes—he would stay in each place two or three months (2974-5); that witness was never with them outside of New York and Massachusetts; she was at South Dartmouth about July, August and September, 1922, and one month in 1924, left the Greens there and returned to 5 West Ninetieth Street (2975-6); Green had an organ at 5 West Ninetieth Street which stayed until 1928; she does not know what became of it (2976); Green took bromo-seltzer every day when he came in from business; he took it in a large glass and the supply disappeared rapidly (2977).

On cross-examination by counsel for Mrs. Wilks, witness testified that after moving to the Waldorf in 1918, Colonel Green and Mrs. Green never lived at the West Ninetieth Street house; she has not been employed by them since 1928 and saw Green the last time at the Sherry-Netherland about four years ago (2978); it had been her practice to see them there about twice a year after 1928 (2979).

On cross-examination by counsel for Florida, witness testified that she last saw Green about 1932 or 1933, about the end of June, just before they went to Round Hills (2980).

On redirect examination by counsel for New York, witness testified she knew the trucks were New Bedford trucks by the name on them; she did not see any of the furniture from the West Ninetieth Street house at the Round Hills house, although she was in all of the rooms there (2981); that there were a few other residences near 5 West Ninetieth Street but most were furnished rooming or boarding houses at that time (2982); that the Greens did not have a routine date for coming from Round Hills; they came back late and when he was not feeling so well they went right on South; sometimes they came back about December, sometimes in October (2982-3); that Mrs. Hetty Green died at 7 West Ninetieth Street about July, 1916 (2984); that witness is certain the paintings from the West Ninetieth Street were at Round Hills—quite a number of them—in the hall; the pictures at the Waldorf-Astoria belonged to the Hotel (2985); does not remember seeing a picture of Mrs. Hetty Green at the Waldorf-Astoria but Mrs. Green took it along when they moved there (2986); at the Waldorf they had an extension 'phone and there was a telephone at West Ninetieth Street and the Greens received mail there (2987).

Leon R. Morford, a resident of New Jersey, testified that he was connected with the Commodore-Biltmore Garage, 323 East Forty-Fourth Street, New York City, and was Vice President and General Manager from May, 1920 to November, 1927 (2990); during this period Green kept automobiles there on live or full service storage, which consisted of keeping the cars clean and ready for use day or night on the year-round basis (2991); as witness recalls, Green had one and the other belonged to his sister, Mrs. Wilks; the first car was a Pierce-Arrow and the second or third year a Lincoln; Mrs. Wilks first had a Cadillac and then a Lincoln (2991-2);

all the plates were New York plates at all times; each of them had a chauffeur (2992).

On cross-examination by counsel for Texas, the witness testified he knew Green casually and once or twice had a conversation with him about his radio station in New Bedford (2993); he was living at the Waldorf-Astoria when witness knew him.

On cross-examination by counsel for Florida, witness testified the cars were stored there continuously throughout the year and not moved or shipped anywhere; they were used frequently; they seemed to use the car more in the Spring and Fall; in the Summer and a couple of months in the Winter they were not used frequently (2997); that his conversation with Green was about 1924 or '5 when the radio was coming in; he told witness about a station or laboratory that he had down East in New Bedford—his Summer home there (2999).

On cross-examination by counsel for Massachusetts, the witness testified that after he ceased connection with the garage in 1927 he saw the cars and the chauffeurs there for two or three years afterwards (3002).

On redirect examination by counsel for New York, witness testified that the first car was a Pierce-Arrow with an enclosed drive or vestibule for the chauffeur, carrying five passengers in the rear and one with the driver (3003); the other cars were limousines with the driver not enclosed (3004); during all the years Green's cars were kept in this garage they bore New York licenses (3005).

August Holcinger, a resident of New York, testified that he was the husband of Ernestina Holcinger and began to work for Green August 1, 1917, as an able seaman on the yacht "United States" and was employed by him approximately two months and lived at 5 West Ninetieth Street when his wife was caretaker, receiving free rent, light and heat but no compensation (3007-8); from 1916, when witness became acquainted with his wife, up to the time they left the West Ninetieth Street house, Green had a dark blue Pierce-Arrow car but witness is not positive about the license plates (3009).

On cross-examination by counsel for Texas, he testified that the yacht "United States" had nothing but "United States" written on the stern; he did not know the home port

of the boat; in the two months he was with Green they sailed around New York waters, up the Sound and Hudson River but did not go outside of New York State or Long Island Sound (3009-10).

On cross-examination by counsel for Massachusetts, he testified that the "United States" did not leave New York waters while he was on it except to visit Mrs. Wilks in Greenwich, Conn. (3014).

John O. Green, of Long Island, New York, testified that he was a salesman for Tiffany and Company, jewelers, New York City, and had been for twenty-eight years (3016); he first met Green ten or twelve years ago, between 1921 and 1925, to sell him jewelry (3017); that he went to his Waldorf-Astoria apartment by appointment, was received in the combined apartment and office room, containing a desk and a few chairs and bed; that after that he saw him a number of times, usually in the months of June and December when he made trips to New York (3019); the last time was about two or three years ago when he stopped coming to New York—possibly 1934; after he moved from the Waldorf, witness saw him at the Sherry-Netherland Hotel in his big room where he had his desk, filing cabinets, a safe and a few chairs and a table (3020); saw his stamp collection a number of times at the Waldorf but is not sure he saw it at the Sherry-Netherland because at that time he was not as keen about it as he was when at the Waldorf (3021); the jewelry he purchased was what people would give as presents mostly; Green told him he spent his Summers at Round Hills (3021).

On cross-examination by counsel for Texas, the witness said he tried to visit Green at Round Hills about 1932 but Green was sick at the time; when he first met Green he was affable and not suffering any pain and when he moved to the Sherry-Netherland he was not as well as when at the Waldorf (3023); saw him on several occasions in a wheel chair in New York, usually saw him twice a year—a half a dozen times each time he came to New York; in their conversations, Green would tell him what had happened since they last met and would show him the new contrivances he had gathered; he liked anything that went

off with a snap; if he could find something to fool his friends he took the keenest delight in it; he sent gifts he purchased all over the country and to a variety of individuals (3024-5); witness knew that he made New York a stopping place going down to Florida and coming back to Massachusetts (3026).

On cross-examination by counsel for Florida, he testified that after trying to see him in 1932, witness saw Green at the Sherry-Netherland in either December of that year or June of 1933 but cannot state positively (3027); in talking with him of what happened since their last meeting, he would speak of Florida but in recent years he did not speak of Texas (3027-8); he spoke of his house in Florida as a nice place and with some degree of affection—he often spoke of going down to Star Island and what he did down there—about his boats, etc. (3028).

On redirect examination by counsel for New York, he testified that Green's account with Tiffany varied from several thousand dollars a visit to as much as $25,000; sometimes he did not buy anything; he was a liberal spender for jewelry (3030).

George E. Ashby, a resident of Brooklyn, New York, testified he was Treasurer of the New York Microscopical Society and had been for five years (3031); that Green became a life member May 6, 1921; the only address the Society had was 111 Broadway, to which all notices for him were sent (3033).

N. Y. Ex. No. 12, Green's application for life membership in the Society dated April 7, 1921, was given in evidence (3035).

On cross-examination by counsel for Texas, witness testified he had never met Green and in response to question by counsel for Florida, said he never saw him about the headquarters of the Society.

Witness further testified that he had attended nearly all meetings of the Society since 1886 and never saw Green there (3037).

Wilbur K. Potter, a resident of New Jersey, testified that he became acquainted with Green in December, 1913,

in connection with the preparation of income tax returns for Mrs. Hetty Green; previously he had been auditor for the Delaware, Lackawanna & Western Railroad and was familiar with accountancy; he first met Green at the Seaboard National Bank in the officers' room where he was occupying a chair, known as Green's chair, and shortly afterwards he met him and his mother at 7 West Ninetieth Street (3041-4); this was a four-story brown stone basement building of the residential type; the first floor front room had been fitted out for an office where the business of Green and his mother was transacted; their business was looking after their own securities and private funds (3044); it was finally arranged that witness was to come the first or second of January, 1914; Mrs. Hetty Green employed him and the Westminster Company paid him; his duties were to keep the accounts of their principal and income; he remained there until August, 1916; Colonel Green stayed next door at 5 West Ninetieth Street; Mrs. Hetty Green lived at 7 West Ninetieth Street for a period prior to her death; after her death, Green moved the office to 111 Broadway, in the Trinity Building, and they have occupied the same office since they moved there in 1916 (3045-7); witness gradually assumed more of the work, conducted the correspondence and had charge of the office; this was also the office of the Windham Realization Company and the Westminster Company, as well as the personal office and business address of Green (3048), and continued to be so during the time they have been at 111 Broadway; he believes Green lived at 5 West Ninetieth Street until the first part of 1918 and lived in the apartment at the Waldorf until it was torn down about 1929; witness visited him there but only had occasion to go into Green's bedroom and the adjoining room occupied by his secretary, where he had some files; in his bedroom he had a large desk (3049-50); when Green didn't come down town witness would probably see him twice a week there to discuss correspondence and get his ideas about investments; from there he went to the Sherry-Netherland; at the Waldorf, he had a private unlisted telephone and had the same in his apartment at the Sherry-Netherland (3051-2); witness would see him at the Sherry-Netherland about the same number of times as at the Waldorf when he was in New York (3052); the apartment at the Sherry-Netherland consisted of a private foyer, his bedroom op-

posite the main entrance, a large living room, another room for files where his secretary and the girl in charge of his stamps were located (3053); beyond these was a pantry, pantry accommodations and a kitchenette; to the left of the entrance was Mrs. Green's quarters; the apartment occupied the entire twenty-fourth floor and the outlook was north and northwest directly over Central Park; outside of the big room was a large terrace (3053); Miss Harlow lived with Green at 5 West Ninetieth Street, and at the Waldorf were Mrs. Green and Mrs. Green's maid (who became Green's attendant), Gerda Larsen, and at the Sherry-Netherland, Mrs. Green and the Colonel's two nurses and Mrs. Green's maid; from the time witness first knew him until he moved to the Waldorf-Astoria Green spent the greater part of each year in New York (3055); he usually came to 7 West Ninetieth Street each morning, would then go down town, usually to the Seaboard Bank, returning in the middle of the afternoon, sometimes stopping at 7 West Ninetieth Street; from 1916 to 1918, he would usually go to 111 Broadway in the morning, then to the Seaboard Bank, of which he was one of the Directors, where he occasionally saw him in the officers' room, usually seated in the same chair (3056); he was elected a Director shortly after he came from Texas and continued to be one through successive mergers until the date of his death; the Seaboard was merged with the Equitable Trust and the Equitable Trust was merged with the Chase Bank; Green was a Director at one time in both institutions and was a Director in the Chase Bank from the time of the merger about 1931 or '32 until his death (3057); he was also a Director in the Columbia Trust, a separate institution from the Seaboard; a Director in the New York Produce Exchange and Storage Company until his death; the only other Companies of which he was a Director were his own Companies—the Westminster Company, the Windham Realization Company and the Green Estate, Incorporated, of all of which he was President (3058-9); he was active in their management and the final say in all of their activities; the Green Estate, Incorporated was the outcome of the Estate of Hetty H. R. Green; this Estate was to remain in existence ten years after her death and then a corporation was formed for that purpose; under the terms of her Will, Green acquired all of the estate of his

grandfather, Edward Mott Robinson, her father, with the exception of a small piece of real estate at Englewood, New Jersey, which was taken by Mrs. Wilks, Green's sister (3059-60); a trust was also created for Mrs. Wilks' benefit by the Will which was supposed to approximate in value $4,400,000, what Green got from his grandfather (3060); at the expiration of ten years, this trust property was to be distributed; Green and Mrs. Wilks were Trustees but she renounced and he became sole Trustee; the residue was to go to the survivor; under the Will of Hetty Green, her residuary estate went to Mrs. Wilks and Colonel Green as Trustees; Mrs. Wilks renounced and Colonel Green became Trustee of that trust also; it was to continue for ten years, income to be distributed quarterly to Colonel Green and Mrs. Wilks in equal shares; the Green Estate, Incorporated, sprang from these residuary estates, at the termination of the trust expiring ten years from the date of Hetty Green's death (3062); the stockholders were Colonel Green and Mrs. Wilks, holding 50% each; this Corporation has been continuously in existence since its formation in 1927 (3063); Colonel Green had an independent fortune of about $500,000, which increased until it was between $35,000,000 and $40,000,000 at the time of his death (3063-4); his banking was principally done in his own name at the Seaboard and the institutions into which it was merged; he also had bank accounts with the Colonial Trust Company at Amsterdam Avenue and Ninety-second Street, a small account at Dallas, Texas, and another at Miami of approximately $42,000, which was used at the time he was building the house and furnishing it; he also had an account with the Bank of Bay of Biscayne, which failed (3064-5); he had no bank account at Terrell, Texas, while witness was with him; the bank account at the New Bedford National Bank was established at the time he started to build at Round Hills, in order to pay contractors' bills and as an accommodation for his employees (3066-7); his balance there was about $25,000 when he died; his New York balances ran from an overdraft up to $1,500,000, taking them as a group (3067); during the time witness was with him, aside from his collections, Green had no other business than the investment of his fortune (3067); in making investments Green would examine circulars from brokers, give orders for the pur-

chase of certain securities and instruct them to deliver them to the Seaboard Bank against payment and the office would reimburse the Bank; when he first came into his fortune from his mother he bought a variety of stocks and as his income taxes became higher, he shifted to Municipals principally—State non-taxable, Federal, City, Village, Town and School District Bonds; between 1916 and 1918, he invested in the Call Money Market in multiples of $100,000 to a half a million (3068-9).

Witness further testified that the Westminster Company was dissolved about 1928; it was an Investment Company and the Estate of Hetty Green included shares in that Company; she owned the majority of the stock and Colonel Green the remainder (3072-4); the Windham Realization Company was used for the purpose of furthering the business of the Westminster Company; Mrs. Hetty Green had a number of mortgages and if any of them required foreclosure, it was assigned by the Westminster Company to the Windham Company for such purpose and any real estate acquired as a result of the foreclosure would be held by the Windham Company; this Company was used for the liquidation of any mortgages whether owned by Hetty Green or Colonel Green or the Westminster Company; the assets of the Windham Company were transferred to the Green Estate, Incorporated (3074-5-6); Green's investments in stocks were of a general nature and his investments in bonds of corporations were the exception and not the rule; his call loans were not made directly by him but by participation in Bank loans; he did not invest in real estate to any extent (3076); he made very substantial investments in stamps, coins and jewelry; these were his main investments; others were incidental and occasional (3077); witness believes that it was the custom of stock and bond salesmen to call upon Green at the Bank; his current income from sales of securities or other properties were kept in these New York Banks mentioned by the witness—principally the Seaboard and during the later years of his life in the Chase (3078-9); when not in New York, his investments would be made by correspondence; the brokers would make their offers and if he approved they would be ordered through the broker to be delivered to the Bank against payment; witness made recommendations for investments which required Green's approval in every instance; if he

was not interested, they would not hear from him and the investment would not be made (3079); witness had charge of all the paid vouchers; when Green was away he made out checks and vouchers; witness had no independent bank account on which he could draw; he was an officer of all of the Corporations owned by Green but had no authority to draw upon their funds—everything was done over Green's signature; no one was authorized to sign for him (3080); at the office, 111 Broadway, all of his accounts of disbursements and investments were handled, excluding stamps, coins and jewelry which did not come under the heading of investments; if Green drew a check while in Florida or elsewhere it would eventually come back to 111 Broadway in order to keep his bank balances right; they kept a record of every item and every check and had different ledger accounts for different activities—such as capital accounts for Round Hills, for Star Island, and a maintenance account for both places; they had no ledger account for the jewelry, stamps and coins, this was charged to him personally (3082-3).

Witness further testified that at the Waldorf-Astoria Green made annual payment for his apartment the first year and afterwards a daily charge based upon the annual payment; the rent was raised several times; in 1918 it was $12,110.50; 1919, $11,491.20; 1920, $13,003.20; 1921, $16,240.32; 1922, $15,520.08; 1923, $17,194.76; 1924, $21,294.00; 1925, $21,422.00; 1926, $20,039.00; 1927, $19,838.00; 1928, the same as 1927, and 1929, $6,758 (3083-4); that Green and his family took their meals at the Waldorf-Astoria and they were all charged on a weekly bill, which usually was sent to 111 Broadway for payment (3085).

N. Y. Ex. No. 13, a lease of the Green apartment in the Sherry-Netherland covering the terms from May 1, 1929 to April 30, 1931, at an annual rental of $27,000, payable monthly, was given in evidence (3089-93). This lease was for a furnished apartment on the twenty-fourth floor of the Building, at the northeast corner of Fifty-ninth Street and Fifth Avenue, to be used and occupied strictly as a non-housekeeping hotel dwelling apartment by the tenant and his family. Thereupon the witness further testified that Green made the following payments of rental at the Sherry-Netherland—May 1, 1929 to April 30, 1930, $27,000; the same amount for the next two years; May 1, 1932 to

December 31, 1932, $18,000; for the years 1933, 1934 and 1935, it was $20,250 each year; for the year 1936 to November 30, 1936, $18,562.50 (3094).

He further testified that while at 7 West Ninetieth Street Green would come in, look over the mail, stay one-half or three-quarters of an hour and leave, sometimes returning during the day; he had a stenographer and answered correspondence; at his office, 111 Broadway, his activities were very similar; he would consult witness about his investments, etc.; the last time Green was in New York was June, 1933, and afterwards was not there to stay until April or May, 1936, when he went to Lake Placid (3094-5); he did not return due to a suit against the Directors of the Chase National Bank in which he did not wish to be served with process (3096); that the property at Round Hills, Massachusetts, which belonged to Mrs. Hetty Green at the time of her death, was subsequently owned by Green and his sister, Mrs. Wilks, and witness thinks the Round Hills property was constructed on the original land (3096-7); immediately after Hetty Green's death, the Colonel's fortune, in round figures, was nearly $6,000,000 (3097).

Witness further testified that Green was interested in theaters and during the period he was with him he made trips to Texas, usually in May and in October or November of almost every year until 1921; after that they were very infrequent (3098); the trip in May was to attend the annual meeting of the Railroad; he would return at the end of two weeks usually; in the Fall he said he was going down to vote; the last time he said he was going to vote was in October, 1921; he also made three or four trips to Marlin, Texas, for his health in years subsequent to 1921; his trips to Massachusetts commenced about 1918 or 1919 and it was his custom thereafter to spend the Summer at Round Hills up to the time of his death (3099-3102); that in 1914, when witness first met Green's mother, he thought her health was very good for a person of her age—79 or 80; in the month of April or May, 1916, she had a stroke; prior to that her condition was fairly satisfactory; up to the time of the stroke she attended the office regularly to look after her business affairs; prior to her death, it was the practice of Green to recommend investments and if his mother approved he went ahead; witness made no investments during Mrs. Hetty Green's lifetime—it was always done by the

Colonel (3102-3); the first income tax return prepared for Colonel Green was 1916 (3103); the 111 Broadway office comprised Rooms 1104 to 1107, inclusive; at 7 West Ninetieth Street the office force consisted of a stenographer and bookkeeper; after Mrs. Green's death, they employed another bookkeeper and another stenographer; at 111 Broadway, the office force consisted of witness, a bookkeeper and two stenographers; Mr. Marshall came into the office at that time; this was the office force up to the time of Green's death (3105); that between the time witness went with him and his removal to the Waldorf-Astoria, he thinks Green had a Pierce-Arrow and a Benz car garaged with the Automobile Club of America on Fifty-ninth Street, and from 1918 to 1929, when he lived at the Waldorf-Astoria, he changed from a Pierce-Arrow to a Lincoln; witness believes that from 1914 to 1932, Green owned cars registered in New York State (3112-13); that the maximum number of cars was two—a Pierce-Arrow and some other make; later on he had two Lincolns (3114).

Witness identified and counsel for New York gave in evidence N. Y. Ex. No. 19, a statement of the amount paid by Green to the Automobile Club of America from March 22, 1917 to February 1, 1922, for the garaging of automobiles belonging to him kept in the State of New York and the same will be found listed in the Record (3115, 3119-21); the record of the payments was kept at the office, 111 Broadway (3122).

N. Y. Ex. No. 20, a motor license from the State of New York for one Benz car, dated February 1, 1916, and New York Ex. No. 21, a motor license from the State of New York for one Pierce-Arrow car, dated June 16, 1916, both in the name of Edward H. R. Green, 5 West Ninetieth Street, New York City, were given in evidence (3123-3130).

The witness further testified that Green afterwards garaged his cars at the Commodore-Biltmore Garage in New York City during the period from July 13, 1921 to the end of June, 1933, and identified a statement of payments for the Garage's bills which was given in evidence as N. Y. Ex. No. 22 (3131-3144).

Counsel for New York gave in evidence N. Y. Ex. No. 23, a photostat copy of an application by Green for New York registration of a Pierce-Arrow automobile for the year 1922 (3146-3149 and 3150-6), in which his residence was given as "Waldorf-Astoria Hotel, New York; County, N. Y.;

State, N. Y.; Business Address, 111 Broadway, New York."

Also N. Y. Ex. No. 24, a copy of the application of Green for a New York automobile registration or license for a Pierce-Arrow car for the year 1922, giving as the residence address "Waldorf-Astoria Hotel, New York City," and business address, "111 Broadway, New York City" (3158-3162).

Also N. Y. Ex. No. 25, application by Green for New York license for the year 1922 for a Pierce-Arrow car, giving the same residence and business address (3163-6).

Witness testified that these Exhibits indicated that two Pierce-Arrow cars and one Benz car were registered in Green's name in New York City for 1922 but it may have been that one of the cars was exchanged during that year (3166); that payments made on Green's cars for registration fees and garage charges are shown by the books at 111 Broadway from 1916 on but not previously (3168).

A statement prepared by witness of such payments was given in evidence as N. Y. Ex. No. 26, covering the years 1921 to 1929 (3170).

Counsel gave in evidence N. Y. Ex. No. 27, receipt of the Collectors Club, 120 West Forty-Ninth Street, dated New York, November 1, 1918, for life membership fee paid by Green (3174). Also N. Y. Ex. No. 28 from the Secretary of the Collectors Club, dated October 11, 1921, regarding a mistake made in sending a bill to him as a life member (3177-8).

Also N. Y. Ex. No. 29, on letterhead of the Trustees of the Collectors Club, dated New York, January 19, 1926, acknowledging receipt of Green's check for $2500 towards the "Permanent Home Fund" (3180-1).

Also N. Y. Exs. Nos. 30 and 31, membership cards of Green in the Collectors Club for the years 1926 and 1934 (3183-4), indicating that Green continued to be a member until the time of his death.

The witness further testified that during the time he was with Green he never paid any income tax to any State but paid personal property taxes to the State of Massachusetts which were included on his regular real estate bill from the Town of Dartmouth and also a personal property tax on his household effects to the State of Florida on bills rendered by the City of Miami Beach and by Dade County (3185); that during the period witness was connected with

him, he paid real estate taxes to the State of Texas but, to witness' knowledge, no other than the poll tax (3187); in Massachusetts, the personal property tax was on his household effects and tangible property there situated (3187); during the period of witness' connection with Green, the only personal property taxes he paid were the Federal income tax, the poll tax in Texas, the personal property tax in Florida upon tangibles, the personal property tax on his tangibles in Massachusetts and the personal property tax to the State of New York (3187-8); that at the office, 111 Broadway, they kept records of Green relating to his personal business affairs; the books were mostly kept by witness but some of the details were handled by others (3189); no bills were paid by witness except after consulting Green, except when he was in Florida or Texas; Mrs. Wilks signed checks in his absence under power of attorney (3189-90); when not in the State of New York the office, 111 Broadway, kept in daily communication with him and asked his advice; the ordinary business of the office was transacted without consulting him; the securities of the Windham Realization Company were kept at 111 Broadway in a fireproof and burglar proof safe, those of the Westminster Company were kept in a safe deposit vault or at the Chase or Seaboard Bank; securities of the Westminister Company were kept in a safety deposit vault at the National Park Bank; they also had some vaults with the Commercial Trust Company and the New Jersey Title Guaranty and Trust Company; the securities of the Green Estate, Incorporated, were kept principally at the National Park Bank and Seaboard Bank; they were handled the same as the securities of the Westminster Company, of which it was the outgrowth; in the safe deposit box in Jersey City, the securities of the Westminster Company and Green Estate, Incorporated, were kept and Green's personal securities were kept at the National Park Bank and the Seaboard Bank and in the office (3192-4); those at the National Park Bank were not in the custody of the Bank but in the same vault with the other securities; those at the Seaboard were in the custody of the Bank; certain of his securities were also kept in the safe at 111 Broadway; aside from the vault rented by him at the National Park Bank he did not rent any safe for the safekeeping of securities but had storage space in the New York Produce Exchange and Storage Company (3194-5).

The witness further testified that the office, 111 Broadway, managed the affairs of Mrs. Wilks in the same manner Green's business was taken care of and when he was Trustee of her estate, he gave all of his time and attention to her affairs; separate records and accounts were kept of her securities (3196); when Green was away from New York the bills were handled by Green himself, the checks prepared by his secretary and the paid check or voucher would come to the office (3197-8).

Witness further testified that Nos. 5 and 7 West Ninetieth Street were owned by the Edward Mott Robinson Estate and upon Hetty Green's death, the property was disposed of by her Will and Green became the owner of 5 West Ninetieth Street and thereafter he paid the taxes (3198-9).

He further testified that when Green was in New York he was in very frequent contact with the office; that the daily mail contact system started when he was away for a long time, like at South Dartmouth or in Florida (3204); that up to the time of her death, Mrs. Hetty Green owned the bonds of the Texas Midland Railroad (3342) and the stock, other than Directors' shares, was owned by the Westminster Company (3205).

Witness further testified that Green paid one-half of all of the taxes levied on the piece of property that was still in the name of Hetty H. R. Green at Round Hills, Massachusetts, which he believes included the land upon which the house was built; the balance of the tax was paid by Mrs. Wilks (3209).

N. Y. Ex. No. 37, a photostat copy of an application of Green for membership in the American Museum of Natural History was given in evidence, containing the notation "Invited January 19, 1917; Elected January 26, 1917; Paid January 23, 1917."

Also N. Y. Ex. No. 38, a life membership ticket of Green in the American Museum of Natural History was given in evidence (3210-12).

The witness further testified that he (Green) was accustomed to attend theatres in New York City; that he had great interest in stamps and when he bought something rare would show it to him once in awhile; that he belonged to the American Philatelic Society of New York City (3215); that Green alone had access to the safety deposit boxes in the National Park Bank and after he was unable

to go himself he gave authority to Mrs. Wilks, when accompanied by the witness (3216-18); the safety deposit box at the National Park Bank was downstairs below the street level and the only way of getting down there was by walking; there were no other safety deposit boxes in Green's individual name; those at the National Park Bank were in the name of the Hetty H. R. Green Estate, of which he was Trustee, and he had some of his own securities there (3218-19); Green, as Trustee of the Estate, had access to the storage space in the vaults of the New York Produce Exchange Safe Deposit and Cold Storage Company which were located below the street level and retained access until the time witness and Mrs. Wilks were given access, as in the case of the Park Bank (3220-1).

Witness identified the statement of Green's income from the Estate of Hetty Green and also his personal income from January 1, 1917 until the end of 1929, prepared under his direction from the records at 111 Broadway, same was given in evidence as N. Y. Ex. No. 39 (3221-3223; 3226).

Year	"E. H. R. Green Income From Estate of H. H. R. Green	E. H. R. Green Income	E. H. R. Green Total Income
1/1/17 to 7/10/17...	$1,218,495.49		
		(Year) (1917)	
7/10/17 to 12/31/17.	282,087.06	$690,996.32	$2,191,578.87
1918.....	1,292,513.49	324,926.81	1,617,440.30
1919.....	1,279,350.77	341,835.00	1,621,185.77
1920.....	1,265,320.73	315,953.66	1,581,274.39
1921.....	1,247,610.10	268,704.24	1,516,314.34
1922.....	1,198,716.04	276,794.35	1,475,510.39
1923.....	1,166,169.59	292,316.89	1,458,486.48
1924.....	1,152,523.82	304,666.03	1,457,189.85
1925.....	1,164,380.91	330,590.60	1,494,971.51
1926.....	1,151,237.49	326,814.79	1,478,052.28
1927.....	433,230.37	1,055,579.66	1,488,810.03
1928.....	73,049.77	1,380,163.66	1,453,213.43
1929.....	4,513.24	1,594,748.59	1,599,261.83
	$12,929,198.87	$7,504,090.60	$20,433,289.47" (3226.)

The witness further testified that his relationship with Mrs. Wilks was similar in a business way to his relationship with Green (3226-7); that she now lives at 988 Fifth Avenue, New York City, and has always lived in that City since he knew her (3227).

Counsel for New York then gave in evidence, as N. Y. Ex. No. 40, photostat copy of a letter from Green to Mrs. Wilks, dated August 24, 1926 (3228-33).

"DEAR SISTER:

I have given considerable thought to your letter of recent date in regard to your home, and I think your suggestion of moving into an apartment a wise one, for more reasons than one. I don't think it a good plan for a lady to live in a house by herself, as she will have a world of entertaining to do, which I know you do not like. Here are some things to remember in getting an apartment:

1st. Don't take too long a lease. After picking out an apartment you like and live there awhile, you don't want to then decide that you do not like the locality.

2nd. You want to be pretty careful who your neighbors are, so that your surroundings may be enjoyable.

3rd. I would get into an apartment house large enough so that they have a cafe or restaurant in connection with it, so that in the event you have trouble with your employes, you can order your meals from below.

4th. If you get into a large apartment house, it is nice to feel that you can lock your door, go away and not feel tied down.

5th. I don't see anything to prevent your having an apartment in New York, as you pay your personal taxes there anyway, and it is the same as though you were living in your own house on 81st Street.

I note what you say about your furniture. I would not take any of the furniture away from Greenwich, but would furnish the apartment with what you can get together in New York, and then buy exactly what you want for the apartment to give you the most comfort. Remember, we are only here for a little while and the only enjoyment we can have for the remaining time is our surroundings; therefore, I would not hesitate to buy whatever furniture is actually needed, with the idea of getting the most comfort out of it.

I would take a little time in picking my apartment, for I know that after you get located you will probably never want to move out of it. I would see that the building was a thoroughly fire-proofed building, and I would not go too far up in height, nor too low. From the sixth to the tenth floors are the best; you get above the noise and dust, and it is cool if you have to remain there during the summer.

Why don't you and Annie come up and visit Uncle Ned and his goats? You want to remember that you are always welcome at Round Hills, and we would be delighted to see you.

With lots of love,

Your affectionate brother."

(3231-3.)

The witness further testified that some time later in 1926, Mrs. Wilks moved into 988 Fifth Avenue and has lived there ever since; prior to that she lived in the house on West Eighty-First Street owned by Mr. Wilks, who died the first part of August, 1926; that the above letter was probably written from Round Hills, Massachusetts (3234); Mrs. Wilks also owns a house in Greenwich, Connecticut, where she spends the Summers (3235).

The witness further testified that Mrs. Wilks had a young girl she was interested in attending St. Mary's Convent, an Episcopal preparatory school for girls at Peekskill, New York, and Colonel Green had some one he was interested in attending Wellesley; they decided to contribute to both institutions jointly as a memorial to Hetty H. R. Green, $250,000 to St. Mary's and $500,000 to Wellesley (3236-7).

A letter dated December 14, 1923, from Green to the Sister Superior of St. Mary's School, Peekskill, New York, was given in evidence as N. Y. Ex. No. 41 (3238-41).

"Upon the return of my sister, Mrs. Wilks, from her visit to your school, we discussed the matter of helping your school. As you are probably aware, our mother left her estate in trust for several years after her death, and, therefore, whatever we do must come from our incomes.

It has been the desire of Mrs. Wilks and myself to do something for our fellow beings and at the same time have it become a memorial to our mother, and, for that reason, we make to your school the following proposition:

We propose to make an annual donation of Twenty-five Thousand ($25,000.00) dollars each for five consecutive years, making a total of a quarter of a million dollars, provided Saint Mary's School shall cause to have erected a building to be known as Hetty H. R. Green Hall, as a memorial to our mother.

The first payment can be made between this date and January 1st, 1924, and the succeeding four annual pay-

ments at times most convenient for Saint Mary's School. This agreement will be made binding upon the decease, in the case of either my sister or myself, so there will be no question as to the school securing the full amount." (3240-1.)

Also a photostat copy of a letter from the Mother Superior to Colonel Green, dated October 20, 1926, as N. Y. Ex. No. 42, was given in evidence (3241-5).

"We cannot adequately express to you our great gratitude for this wonderful addition to our school plant. It is complete in every way. The large new study hall is a beautiful room, and can be used for lectures as well as for its own purpose. The special rooms for the music department are the greatest convenience. The girls who occupy the two dormitory corridors are the objects of envy among all the others less favored. The infirmary on the top floor equips us for every emergency from an epidemic of contagious diseases to some very serious illness. The solarium at the southwest end could even be used for an operating room. In the nearly sixty years since we have been carrying on St. Mary's School we have never had such a large and generous gift, and our hearts are full of deep thankfulness.

At the entrance to the vestibule in the sallyport before the study hall we have the bronze tablet with the inscription you prepared. A little later we shall have a photograph of this entrance taken in order that you may see it" (3244).

N. Y. Exs. Nos. 43, 43-A and 43-B, photographs of the Hetty Green Memorial Wing at St. Mary's School, Peekskill, New York, of the tablet and inscription thereon were given in evidence (3246-8). The inscription on the tablet was "In Memory of Their Mother, Hetty H. R. Green, born November 21, 1834, died July 3, 1916.

Edward Howland Robinson Green. H. Sylvia Ann Howland Green Wilks" (3247).

The witness further testified that during his acquaintance with Green his closest relatives were his mother, sister and wife (3249).

N. Y. Ex. No. 44, Green's application for membership in the International Chamber of Commerce, dated January 2, 1925, in which his address was given as 111 Broadway, New York City, and it was stated he was a member of the New

York Chamber of Commerce, was given in evidence (3250).

N. Y. Ex. No. 45, Green's letter of January 2, 1925, enclosing his check for $100 for associate membership in the International Chamber of Commerce was also given in evidence (3251-2). Witness testified such membership continued up to his death (3252); he further testified that Green was a member of the Union Club of New York City from some time prior to 1914 until his death; notices from the Club were addressed to him at 111 Broadway (3258-9).

N. Y. Ex. No. 46, a receipt for dues of Green for the year 1936 was given in evidence (3259-60).

He further testified that Green was a life member of the New York Athletic Club at Central Park South, Fifty-Ninth Street and Seventh Avenue, New York City, and N. Y. Ex. No. 47, a receipted bill for dues as life member, dated December 10, 1912, was given in evidence (3261-3), and his application, dated October 25, 1912, for resident membership was given in evidence as N. Y. Ex. No. 48, and gives his residence as 5 West Ninetieth Street, New York City (3264-6).

N. Y. Ex. No. 49, a photostat copy of an affidavit of Walter L. Hough, Executive Secretary, from the records of the Surrogate's Court, Essex County, in the Matter of the Probate of the Will of E. H. R. Green was given in evidence, in which affiant stated that the constitution of the New York Athletic Club defined resident membership as one who resides within a radius of thirty miles of the Club House or one who remains within such territory for three consecutive months during each calendar year (3269).

The witness further testified that Green was a member of the Columbia Yacht Club from some time in 1911 until his death. N. Y. Ex. No. 50, his application for membership in such Club, dated September 8, 1911, was given in evidence, in which his business address was given as 111 Broadway and his residence as 5 West Ninetieth Street; that this Club was located on the North River, New York City (3270-1-2).

He also testified that Green was a member of the Metropolitan Museum of Art of New York City from 1914 and elected to a life membership or fellow for life in 1918, and mail relating to the Museum was sent to him at 111 Broadway.

His membership ticket for the year 1932 was given in evidence as N. Y. Ex. No. 51 (3274-5).

He also testified that Green was a member of the Atlantic Yacht Club and N. Y. Ex. No. 52, notification of his election to regular membership in the Club, dated January 11, 1912, and N. Y. Ex. No. 53, letter from Green enclosing his check for annual dues to February 15, 1913, were given in evidence (3276-9).

N. Y. Exs. Nos. 54, 54-A, B, C, D and E, statements of account of Green with said Club were given in evidence (3280-4).

Also N. Y. Ex. No. 55, dated April 2, 1934, addressed to members of the Club, and N. Y. Ex. No. 56, addressed to members of the Club, dated February 23, 1935, relating to the dissolution of the Club, were given in evidence (3286-9).

N. Y. Ex. No. 57, a letter to Green notifying him of his election to life membership in the Lake Placid Club (N. Y.); N. Y. Ex. No. 58, a copy of a letter of Green's secretary enclosing check for fees and dues, were given in evidence, with his life membership card, N. Y. Ex. No. 59 (3290-2-3).

Counsel for New York also gave in evidence the following Exhibits:

N. Y. Ex. No. 60, copy of an agreement made by Green with the Aeolian Company April 26, 1929, for one Victor Automatic Combination (3296-8), signed by Green and giving his "home address" as Sherry-Netherland Hotel.

Also N. Y. Exs. Nos. 61-65, statements relating to Green's membership in the Association for Stamp Exhibitions, Inc., of New York City (3299).

In No. 63, dated December 17, 1925, addressed to Green at 111 Broadway, New York City, it was stated that among others appointed by the Chairman as a committee on ways and means to solicit funds was "Colonel E. H. R. Green, New York," and No. 64 was an acknowledgment of his subscription for $2500 to the 1926 Exhibition to be held in New York that year (3302-4).

Said witness further testified that Green continued as a member of this Society until the time of his death and in the 1926 Exhibition there was an exhibit marked as his (3306). He further testified that the office force at 111 Broadway was paid most of the time by the Windham Realization Company; that witness was paid at one time by the Westminster Company, by the Estate of Hetty Green and by the Green Estate, Incorporated; that the staff at 111 Broadway took care of all of the personal affairs of Colonel Green and Mrs. Wilks and also the affairs of the Corporation but

none of the employees except himself were paid by either Green or Mrs. Wilks personally (3307); that the neighborhood around 5 and 7 West Ninetieth Street, between Central Park West and Amsterdam Avenue, on both sides of the street, was principally three or four story houses with brown stone fronts and basement; that across the street from 5 and 7 West Ninetieth Street was a garage, originally a private stable; there was no material change from the time witness went there until 1918 (3308). Witness further testified that he never received any letter from Green stating that he had changed his legal residence to Florida (3308); that the Chase Bank litigation which caused Green to remain outside of New York during the latter years of his life, under advice of counsel, started in 1933.

Thereupon, counsel for New York gave in evidence correspondence between Green and his counsel, Charles W. Pierson, respecting this litigation, being N. Y. Exs. Nos. 66 to 75, inclusive, covering the period from October 31, 1933 to December 14, 1933 (3310).

In Ex. No. 70, letter from Pierson to Green (3324) he stated, among other things, "You cannot be sued in the New York courts without personal service here and I doubt whether suit would lie in the courts of Massachusetts or Florida on account of the difficulty of getting jurisdiction of the Chase Bank, a necessary party" (3325), and in Green's reply, Ex. No. 71, November 14, 1933, he says,

"In answer to your letter of November 9th will say that as stated in your letter, I am in Massachusetts and can remain here for a reasonable length of time, but the weather is getting very cold. I know of no way of getting to Florida without going through the State of New York and going down on the train in our car we will have to go over Hell Gate Bridge and come into the Pennsylvania Station, where we would remain for about an hour and a half during the midnight hours" (3327).

In Ex. No. 74, dated December 12, 1933, from Pierson to Green at 46 Star Island, Florida, he says,

"I assume that by this time you are in your winter home. Trust you had a comfortable trip with no disturbing incidents.

Counsel for the Bank called me this morning to ascertain whether you had yet been served with papers. He said that

in certain of the suits active efforts are apparently being made to serve individual defendants. He invited me again to join in the conferences of counsel which are being held almost daily to discuss questions of procedure and strategy" (3334-5).

In Ex. No. 75, Green to Pierson, December 14, 1933, from Star Island, Miami Beach, Florida, he said,

"We left New Bedford Sunday the 10th and arrived here Tuesday morning, where the weather is very beautiful. The trip didn't tire me much and am feeling pretty well today. We were in New York only a few minutes and I was not bothered by any legal service there, on the way down or since I arrived here" (3337).

Counsel for New York also gave in evidence N. Y. Ex. No. 76, copy of a letter from David L. Stehr, of New York City, to Edward H. R. Green, Terrell, Texas, dated March 9, 1936, advising him of a suit instituted on behalf of the stockholders against the Directors of the Chase National Bank, etc., and stating, "I have tried to effect service upon you in New York, but without success. Therefore I enclose herewith a copy of the Summons and Complaint in the action to enable you to appear and defend" (3339).

Counsel agreed that the Union Club of New York has been for many years one of the leading social organizations of that City (3343).

Said witness further testified that during the time he was connected with Green, his banking to a large extent was done in New York City but there were substantial amounts at times in Banks outside of New York, at New Bedford, Massachusetts, the Bank of the Bay of Biscayne and the First National Bank of Miami Beach, Florida; at the time the house at Round Hills was under construction he had $100,000 or $200,000 at a time in the New Bedford Bank to pay the contractors, etc. (3344-5); at other times the balance would be in the neighborhood of $25,000; at the time of buying the property in Florida, he had in the neighborhood of $150,000 or $200,000 in the Bank of the Bay of Biscayne for financing the construction, etc.; this Bank closed with considerable loss to him and later in the Miami Beach Bank his balance ran from $30,000 to $45,000 (3343); in New York his average balance ran from to $200,000 to $400,000 (3346);

that in connection with the education of one Jennie Turpaud, a French War orphan, Green submitted a sworn statement to the Department of Labor, Immigration Service in 1919, N. Y. Ex. No. 77, in which he stated among other things:

"12. Name and age: Edward H. R. Green—51 years.
13. Place of birth: London, England—American parents.
14. Date of arrival in the United States, month and year: 1876.
15. Name of steamer and line: Cunard Line.
16. Have you taken out either (a) first papers or (b) full citizenship papers? If either question answered 'Yes' state precisely when and where: Parents American citizens.
17. Where do you live, city, street, and number? Waldorf Astoria, New York City.
18. How many rooms do you occupy and how many persons now live in them? * * *
19. Are you married: If 'yes,' give maiden name of wife, her age, and where she lives: Yes. Mabel Harlow—of lawful age.
20. Give names and ages of all your children and state where they are: None.
21. Describe fully your physical condition. State how often, and why, incapacitated for work since arrival in United States: Good—not incapacitated.
22. Regular occupation: Trustee of the Estate of Hetty H. R. Green.
23. How long have your followed this occupation and what other occupations have you had: Since her death—In various executive capacities as well as President of the Texas & Midland R. R. for 24 years" (3351-2).

The witness further testified that Green was a life member of the Aero Club of America and so continued until his death, a notification of his election, dated April 26, 1918, N. Y. Ex. No. 78, and membership card, N. Y. Ex. No. 79, were given in evidence (3356-9). He further testified that Walter P. Allen is President of the American National Bank of Terrell, Texas, and an old friend of Green's in Texas, and that Earnest R. Duff was steward of his yacht "United States" and afterwards his house steward for several years (3360).

On cross-examination by counsel for Texas, the witness further testified that after 1921 Green did not visit the of-

fice, 111 Broadway and outside of the infirmities testified to by Dr. Pascal he was then in perfect health, so far as he knew (3363); that his instructions were always to name him as a legal resident of Terrell, Kaufman County, Texas, and in the preparation of documents and until the day of his death there was no change in these instructions (3364).

On cross-examination by counsel for Massachusetts, he testified that after the storage of the two automobiles was completed in New York some time in 1933, they were taken to South Dartmouth, Massachusetts, and so far as he knows remained there for the rest of Green's life (3364); that at the time of the death of Mrs. Hetty Green in July, 1916, title to the two houses, 5 and 7 West Ninetieth Street, was in Mrs. Wilks as a result of the foreclosure of mortgages on them and so remained until they were sold in 1928; the beneficial title passed under Hetty Green's Will to Colonel Green (3365); during most of the time he occupied the house title was in his sister but shortly after his mother's death Green in August, 1916, moved his business office to 111 Broadway (3366); the occupation of 7 West Ninetieth Street was due to Mrs. Hetty Green's desire to make use of that family-owned property and also to be more convenient for the Colonel (3366). Witness identified Mass. Exs. Nos. 54 and 55 regarding bills for room charges rendered by the Waldorf-Astoria Hotel, which he wrote for Colonel Green (3368); he further testified that the trust under the Will of Mrs. Hetty Green continued for ten years after her death, when the Green Estate, Incorporated, was formed, and that the property at Round Hills was carried as an entity of the Green Estate without division, so that the beneficial interest was in Green and his sister; the Green Estate was incorporated under the laws of Delaware (3373); that under Green's Will, he provided that in the event of his death all of his property should go to his mother and if she did not survive him, to his sister, Mrs. Wilks (3374).

Witness identified photostat copy of the ante-nuptial agreement between Green and Miss Harlow and the Columbia Trust Company, dated June 26, 1917. In connection with this offer, the Special Master read into the Record a letter from the Clerk of the Supreme Court of the United States enclosing an order dismissing the suit as to Mabel Harlow Green, which was as follows:

"I write to inform you that the Court today entered the following order in the case of the State of Texas vs. the State of Florida, et al., No. 12, Original, October Term, 1937:

'Upon consideration of the motion of Mabel Harlow Green that the bill of complaint in this cause be dismissed as to her, and of the stipulation of the parties to the cause, attached thereto, consenting to the granting of such relief, the motion is granted and the bill of complaint is dismissed as to the said Mabel Harlow Green, without costs as to her' " (3377).

The aforesaid agreement was given in evidence as Mass. Ex. No. 56 (3382, 3383-90).

The witness further testified that any checks or drafts drawn upon Green's account in 1928 would have come to his attention; that from his knowledge and examination of the records there was no draft on Green's account by William McDonald or any one else in 1928 (3390-1); that the last contribution to William McDonald according to the records was June 28, 1920, for $3,000 (3391); that after Green's injury in October, 1921, he never came to the office and they transacted their business with him by personal visits or correspondence (3392); when he was away they kept a record of where his mail was to be sent; they would receive advice from Green where he expected to be on certain days and from these notations the office records were made up (3395-8-9). This record of Green's movements covering the period from July 1, 1921 to June 11, 1936, was given in evidence as Mass. Ex. No. 57 (3401-4).

The witness, in response to questions by counsel for Massachusetts, pointed out that from this Exhibit Green arrived at South Dartmouth, Massachusetts, invariably on July 1st, but made no statement to witness of his reason for doing so; that in 1934, he arrived there on June 21st and in 1935 on June 16th (3405). Said Exhibit is set forth in the Record (3407-10), and is as follows:

"South Dartmouth, Mass.	7/ 1/21-10/15/21
Dallas, Texas	10/28/21-11/ 2/21
Marlin, Texas	1/23/22- 4/20/22
Dallas, Texas	4/21/22- 5/ 5/22
South Dartmouth, Mass.	7/ 1/22-12/15/22
Miami Beach, Fla.	3/ 8/23- 3/22/23
Jacksonville, Fla.	3/26/23- 4/27/23
Dallas, Texas	4/28/23- 5/ 8/23

South Dartmouth, Mass.	7/ 2/23-10/31/23
Jacksonville, Fla.	1/ 8/24- 3/10/24
Miami Beach, Fla.	3/10/24- 4/21/24
Marlin, Texas	4/21/24- 5/20/24
South Dartmouth, Mass.	7/ 1/24-12/22/24
Miami Beach, Fla.	1/ 3/25- 4/14/25
Marlin, Texas	4/16/25- 5/11/25
South Dartmouth, Mass.	7/ 1/25-12/ 1/25
Miami Beach, Fla.	2/ 1/26- 4/25/26
Marlin, Texas	4/27/26- 6/ 3/26
South Dartmouth, Mass.	7/ 1/26-12/10/26
Miami Beach, Fla.	1/19/27- 4/ 9/27
Marlin, Texas	4/11/27- 5/22/27
South Dartmouth, Mass.	7/ 1/27-12/ 6/27
Miami Beach, Fla.	1/ 1/28- 5/17/28
South Dartmouth, Mass.	7/ 2/28-12/15/28
Miami Beach, Fla.	1/ 4/29- 4/11/29
South Dartmouth, Mass.	7/ 1/29-12/15/29

Colonel E. H. R. Green.

	Arrived	Left
New York	12/16/29	1/4/30
Miami Beach, Fla.	1/ 6/30	5/30/30
New York	6/ 1/30	6/30/30
South Dartmouth, Mass.	7/ 1/30	11/ 3/30
Asheville, N. C.	11/ 5/30	12/10/30
Miami Beach, Fla.	12/11/30	5/30/31
New York	6/ 1/31	6/30/31
South Dartmouth, Mass.	7/ 1/31	12/ 6/31
New York	12/ 7/31	1/10/32
Miami Beach, Fla.	1/12/32	5/28/32
New York	5/31/32	6/30/32
South Dartmouth, Mass.	7/ 1/32	10/23/32
Lake Placid, N. Y.	10/24/32	12/15/32
New York	12/16/32	1/19/33
Miami Beach, Fla.	1/21/33	5/13/33
Lake Placid, N. Y.	5/16/33	6/12/33
New York	6/13/33	6/30/33
South Dartmouth, Mass.	7/ 1/33	12/10/33
Miami Beach, Fla.	12/12/33	6/18/34
South Dartmouth, Mass.	6/21/34	12/16/34
Miami Beach, Fla.	12/18/34	5/11/35

	Arrived	Left
Marlin, Texas	5/14/35	6/16/35
South Dartmouth, Mass.	6/19/35	11/23/35
Miami Beach, Fla.	11/25/35	4/26/36
Lake Placid, N. Y.	4/29/36	

Colonel Green died 6/8/36 about 2:40 P. M. Funeral car left Lake Placid 6/9/36 for South Dartmouth, Mass.

Funeral car left South Dartmouth, Mass. 6/11/36 for Bellows Falls, Vt.

Interment at Bellows Falls, Vt. 6/12/36.

2/ 4/22- 4/24/22	Arlington Hotel, Marlin, Texas
5/ 5/22- 5/ 8/22	Adolphus Hotel, Dallas, Texas
3/19/23	Royal Palm Hotel, Miami, Fla.
4/12/23	Windsor Hotel, Jacksonville, Fla.
5/ 7/23	Adolphus Hotel, Dallas, Texas
5/24/24	Arlington Hotel, Marlin, Texas
5/20/25	Arlington Hotel, Marlin, Texas
5/20/26	Arlington Hotel, Marlin, Texas
5/ 2/27	Arlington Hotel, Marlin, Texas."

(3407-10.)

On cross-examination by counsel for Massachusetts, the witness further testified that upon Green's death at Lake Placid the remains were taken to South Dartmouth and the services held at Round Hills; that the interment was in the lot at Bellows Falls, Vermont, where Green's mother and father were interred; that Mrs. Wilks was ill in the hospital and unable to attend the funeral (3411).

The witness identified a copy of Green's Last Will and Testament executed March 28, 1908, before witnesses residing in Dallas, Texas, and the same was offered in evidence as Mass. Ex. No. 58, and is as follows (3412-14):

"In the Name of God, Amen.

I, Edward H. R. Green, of Terrell, State of Texas, being of sound and disposing mind and memory, and considering the uncertainty of this life, do make, publish and declare this to be my last Will and Testament, as follows: First, after my lawful debts are paid, I give, bequeath and devise to my Mother, Hetty H. R. Green, of Bellows Falls, State of Vermont, if she is living at the time of my death, all my estate, both real and personal, and, should she not be living at the

time of my death, then I give, bequeath and devise all my estate, both real and personal, to my sister, Hetty Sylvia A. H. Green, of Bellows Falls, Vermont.

I hereby appoint my Mother, Hetty H. R. Green, my sister, Hetty Sylvia A. H. Green, without Bond, to be Executrices of this my last Will and Testament; hereby revoking all former Wills.

In Witness Whereof, I have hereunto subscribed my name, and affixed my seal, the twenty-eighth day of March, in the year of our Lord, one thousand nine hundred eight.

(Signed) Edward H. R. Green.

Witnesses:

(Signed) E. J. Gannon. E. M. Reardon. A. V. Lane.

Subscribed by Edward H. R. Green, the Testator named in the foregoing Will, in the presence of each of us, and at the time of making such subscription the above Instrument was declared by the said Testator to be his last Will and Testament and each of us, at the request of said Testator and in his presence and in the presence of each other, sign our names as witnesses thereto, at the end of the Will.

(Signed) E. J. Gannon, Residing Dallas, Texas.
(Signed) E. M. Reardon, Residing Dallas, Texas.
(Signed) A. V. Lane, Residing Dallas, Texas" (3412-14).

The witness further testified that he had prepared a tabulation of Green's contributions to charitable organizations in the several States from the ledger accounts bearing that heading; that the Round Hills Radio Corporation and Whaling Enshrined were incorporated as charitable corporations under the laws of Massachusetts and the contributions to them are shown on a separate sheet (3416). In response to questions by counsel for Texas, witness said that the contributions shown on the tabulation to the American Legion of Texas did not include the purchase of coins, which would add $2,000 more; that the tabulation was made from payments that went through the bank account and came into the office and shows the contributions listed in the probate proceedings in the Surrogate's Court of Essex County, New York; that the list possibly would not include contributions made by Green in cash or in some one else's name (3420-1); that the tabulation is not absolutely complete as to Florida donations but is complete so far as their office records go; that the Florida list contains some items that were paid but

which they did not consider contributions and had not listed as such (3422); that the tabulation reflects the contributions reported in Green's Federal income tax returns but his contributions over a number of years are more than permitted by his income tax returns (3424); that the Exhibit did not include any contributions for the education of so-called wards or French orphans which were considered personal matters, nor does it include all contributions Green made for charitable purposes in New York but all that is shown in these records (3425). Said lists or tabulations were thereupon given in evidence as Mass. Ex. No. 59 (3425).

Massachusetts Exhibit No. 59-A

"E. H. R. Green Contributions

Date	Name	Amount
10/23/20	Community Welfare Fund—New Bedford	$1,500.00
5/17/21	Wellesley College	5,000.00
11/25/21	New Bedford Community Welfare Fund	2,000.00
11/17/22	Congregational Church	150.00
11/27/22	New Bedford Community Welfare Fund	1,000.00
10/29/23	New Bedford Community Welfare Fund	1,000.00
12/27/23	Wellesley College	50,000.00
1/ 2/24	Wellesley College	50,000.00
11/ 8/24	New Bedford Community Welfare Fund	1,000.00
1/ 1/25	Wellesley College	50,000.00
11/28/25	American Legion Fund	1,000.00
11/ 5/25	New Bedford Community Welfare Fund	2,000.00
12/ 4/25	Red Cross	10.00
1/ 1/26	Wellesley College	50,000.00
7/15/26	Massachusetts Institute of Technology	3,500.00
7/27/26	M. L. Kelly, Treas., U. S. Junior Nautical Training School	1,000.00
11/18/26	New Bedford Community Welfare Fund	2,000.00
11/19/26	Massachusetts Institute of Technology	7,000.00
1/ 1/27	Wellesley College	50,000.00

Date	Name	Amount
6/27/27	Donald McKay, Memorial Fund Boston	1,000.00
8/13/27	Massachusetts Institute of Technology	10,000.00
10/29/27	New Bedford Community Welfare Fund	1,000.00
6/18/28	Massachusetts Institute of Technology	20,000.00
12/ 1/28	Red Cross	10.00
12/ 6/28	New Bedford Y. W. C. A.	1,000.00
12/14/28	New Bedford Community Welfare Fund	1,000.00
2/12/30	Massachusetts Institute of Technology	28,760.00
6/30/30	Massachusetts Institute of Technology	10,000.00
12/ 2/30	Red Cross	10.00
1/ 5/31	Massachusetts Institute of Technology	10,000.00
7/ 8/31	State Reclamation Board	500.00
7/10/31	Massachusetts Institute of Technology	10.000.00
11/ 2/31	Disabled American Veterans	25.00
11/27/31	Red Cross	10.00
1/25/32	Massachusetts Institute of Technology	10,000.00
6/14/32	Wheaton College	1,000.00
7/ 8/32	Massachusetts Institute of Technology	10,000.00
1/ 4/33	Massachusetts Institute of Technology	10,000.00
7/ 5/33	Massachusetts Institute of Technology	10,000.00
		$412,475.00"

Massachusetts Exhibit No. 59-B

"E. H. R. Green Contributions

To Organizations Within the State of New York

Date	Name	Amount
3/ 5/17	Junior Naval Reserve	20.00
4/23/17	Bide-a-Wee Home	100.00

Date	Name	Amount
5/20/18	American Red Cross	1,000.00
5/24/18	American Red Cross	1,000.00
5/24/18	American Red Cross	150.00
5/24/18	American Red Cross	250.00
12/11/19	American Red Cross	2.00
12/22/19	Bide-a-Wee Home	25.00
1/28/20	Rev. P. J. Magrath	250.00
5/10/20	Dickson Colored Orphanage	1,000.00
5/ 7/20	Peoples Institute	250.00
12/ 2/20	New York Tuberculosis Assn.	5.00
1/27/21	Fordham University	10,000.00
3/ 1/21	Chrystie Street House	50.00
3/ 1/21	St. Peters Mission	100.00
12/ 2/21	Red Cross	5.00
12/ 4/23	Red Cross	5.00
1/30/23	St. Elizabeth Hospital	2,000.00
12/17/23	Waldron School	500.00
12/21/23	Bide-a-Wee Home	100.00
12/27/23	Sisterhood of St. Mary, Inc.	25,000.00
1/ 2/24	Sisterhood of St. Mary, Inc.	25,000.00
12/ 4/24	Red Cross	500.00
1/ 1/25	Sisterhood of St. Mary, Inc.	25,000.00
12/ 4/25	Red Cross	5.00
12/12/25	Red Cross	2.00
1/ 1/26	Sisterhood of St. Mary, Inc.	25,000.00
11/26/26	Red Cross	10.00
1/ 1/27	Sisterhood of St. Mary, Inc.	25,000.00
12/ 1/27	Red Cross	10.00
12/ 3/27	Mary Washington Hospital	250.00
6/ 4/28	Bide-a-Wee Home	100.00
6/10/29	New York Skin & Cancer Hospital	50.00
12/27/29	Bide-a-Wee Home	10.00
2/17/21	Bide-a-Wee Home	5.00
2/ 2/32	Bide-a-Wee Home	5.00
4/27/32	Bide-a-Wee Home	5.00
		$142,764.00"

Massachusetts Exhibit No. 59-C

"E. H. R. Green Contributions

To Organizations Within the State of Texas

Date	Name	Amount
2/23/21	Girls Friendly Society of Texas	$50.00
8/ 5/21	Dallas Y. M. C. A.	3,125.00
5/ 3/36	Texas Memorial Museum	750.00
		$3,925.00

To Organizations Miscellaneous as to Locality

Date	Name	Amount
5/ 1/22	Ethel Walker School (Connecticut)	$ 50.00
5/14/25	Chamber of Commerce U. S. A. (General)	250.00
7/19/30	Veterans of Foreign Wars (General)	797.50
		$ 1,097.50

Massachusetts Exhibit No. 59-D

"E. H. R. Green Contributions

To Organizations Within the State of Florida

Date	Name	Amount
3/25/27	Miami Community Chest	$ 1,000.00
2/21/28	Miami Community Chest	1,000.00
2/ 1/29	Red Cross	1.00
4/ 1/29	Dade County Boy Scouts	25.00
4/ 1/29	Community Chest	500.00
4/ 1/29	F. Lawry Wall—Community Chest	500.00
1/20/30	Committee of One Hundred	500.00
1/23/30	Committee of One Hundred	125.00
1/27/30	Junior League	500.00
1/27/30	Junior League	20.00
1/28/30	Miami Beach Chamber of Commerce	1,000.00
3/ 3/30	Community Church	250.00
5/23/30	St. Patrick's Church	100.00
5/27/30	Miami Jr. Chamber of Commerce	3,000.00
12/24/30	Miami Empty Stocking Fund	500.00
1/20/31	American Legion	10.00

Date	Name	Amount
1/28/31	Miami Beach Chamber of Commerce	1,000.00
2/ 6/31	Community Church	250.00
5/ 6/31	Committee of One Hundred	75.00
1/14/32	Temple of Israel Sisterhood	10.00
1/20/32	Miami Beach Chamber of Commerce	1,000.00
1/29/32	Florida Peace Officers Assn.	50.00
2/ 3/32	National Council of Jewish Women	10.00
2/ 4/32	Junior League	200.00
2/ 4/32	Veterans Assn.	2.00
2/ 5/32	Dade County Community Chest	250.00
3/ 4/32	Miami Beach Community Chest	250.00
4/ 1/32	Miami Unemployment Fund	15.00
1/23/33	Miami Beach Chamber of Commerce	1,000.00
2/28/33	Community Chest, Miami	1,000.00
5/ 5/33	Jackson Memorial Hospital, Miami	5,000.00
3/17/34	Community Church	250.00
2/ 1/35	Community Church	250.00
3/23/35	Saint Francis Hospital	100.00
1/25/36	Miami Beach Chamber of Commerce	1,000.00
		$20,743.00"

(3426-31.)

Witness further testified that Wheaton College and Wellesley College and the Massachusetts Institute of Technology shown on this list were in Massachusetts; that the New York contributions began in 1917 and those of Massachusetts in 1920 (3433-4); that the Bide-a-Wee Home was a home for animals in New York City in which Green and Mrs. Wilks were interested; that Fordham University, New York, was the college he attended as a young man (3437). The witness also produced a tabulation from his books of contributions to the Round Hills Radio Corporation and Whaling Enshrined and the same was given in evidence as Mass. Ex. No. 60 (3446).

"E. H. R. Green Contributions

To Round Hills Radio Corporation and Whaling Enshrined

Date	Name	Amount
1924	Round Hills Radio Corp.	$34,806.68
1925	Round Hills Radio Corp.	58,552.41

Date	Name	Amount
1926	Round Hills Radio Corp.	48,151.31
1926	Whaling Enshrined	11,407.80
1927	Round Hills Radio Corp.	287,732.79
1927	Whaling Enshrined	9,876.65
1928	Round Hills Radio Corp.	310,100.06
1928	Whaling Enshrined	11,487.31
1929	Whaling Enshrined	12,920.01
1929	Round Hills Radio Corp.	505,432.08
1930	Round Hills Radio Corp.	90,325.87
1930	Whaling Enshrined	14,269.16
1931	Round Hills Radio Corp.	29,842.70
1931	Whaling Enshrined	22,914.19
1932	Round Hills Radio Corp.	28,841.17
1932	Whaling Enshrined	14,289.10
1933	Round Hills Radio Corp.	28,943.92
1933	Whaling Enshrined	8,320.56
1934	Round Hills Radio Corp.	42,363.64
1934	Whaling Enshrined	14,203.03
1935	Round Hills Radio Corp.	41,000.73
1935	Whaling Enshrined	7,016.04
1936	Round Hills Radio Corp.	18,414.95
1936	Whaling Enshrined	5,729.09
		$1,656,941.25"

(3446-7.)

The witness further testified that after his injury to his leg in October, 1921, Green gave up entirely his Fall trips to Texas and thereafter began making these developments at South Dartmouth—the radio station, airport, aviation school and laboratory for students of the Institute of Technology (3448); that the mansion at Round Hills was completed about July, 1921, and had been under construction for a couple of years, from 1919 on; that the yacht "United States" was sunk in September, 1919, and the construction at South Dartmouth antedated that by a few months; the architect of the South Dartmouth house was A. C. Bossom, an Englishman now residing in London but at that time living in the United States; he had entire charge of the supervision of the plans and construction; he was a son-in-law of Mr. Bayne, President of the Seaboard Bank (3450).

Thereupon, the witness identified and it was given in evidence Mass. Ex. No. 61, a photostat copy of an agreement between Green and Mrs. Wilks, dated December 17, 1923, in which Green was described as "Edward Howland Robinson Green, of Terrell, Texas," relating to the contribution of $500,000 made by them to Wellesley College for the erection on the campus of an Administration Building to be known as the Hetty H. R. Green Hall, as a memorial to their mother, to cost between $600,000 and $750,000; that the Hall was erected and the payments made by his office (3453-4-5).

On cross-examination by counsel for Florida, the witness testified that his first meeting with Green was in reference to the preparation of his mother's income tax return for the year 1913; that later, just before Christmas, 1913, he saw Green and his mother at 7 West Ninetieth Street; that he had access to her books and did not confer with Green regarding it; that he was engaged upon this work until the return was filed in March, 1914, meanwhile he saw Green there and heard discussions with his mother regarding their business affairs; believes Green was thoroughly familiar with her affairs; they worked together but she was the "master mind"; at that time the Colonel lived next door at 5 West Ninetieth Street and had a household including Miss Harlow and the servants (3466-71); this building was immediately adjoining 7 West Ninetieth Street, where Mrs. Hetty Green had her office; both buildings were similar and under her jurisdiction (3472-3); after the income tax return was finished he continued to work for Mrs. Hetty Green between 1914 and 1916; that Green's fortune was then about $500,000 (3473-4); after Mrs. Hetty Green's death in 1916, Green became the personal owner of the Edward Mott Robinson Estate, of which he was one of the Trustees, and for the next ten years he had a half interest in his mother's estate; that in August 1916, they moved to 111 Broadway which became the center of the business transactions involving the Green interests whether they belonged to Mrs. Wilks or to the Colonel (3474-5); witness had charge of this office and Green came there almost daily when he was in New York, staying from ten or fifteen minutes to two or three hours; that his contact with the witness and the office continued constant for a number of years up to 1921 (3477); in October of that year, while on a trip to Texas, he had a slight accident, was under

the doctor's care for quite a long time and never came back to the office; their communication with him thereafter was by personal contact and correspondence (3477); they first began to get vouchers for expenditures at Round Hills in 1919 and there was a transfer of funds to a local bank at South Dartmouth (3478); in 1919, after the "United States" sank, Green went to a hotel at South Dartmouth and in 1920 stayed on a houseboat (3479); that he got into the house in 1921 (3480); that in 1924, he started the Radio Corporation work and in 1926, the Whaling Ship (3481); that the records show that he went to Miami Beach in March, 1923, the Winter before these outside operations at South Dartmouth began (3482); that in 1924 or 1925, he bought some real estate in Florida and began the Florida operations; when he first went there he stopped at the Royal Palms Hotel; the following year he built the houseboat and stayed on that; the boat was built at Jacksonville and he tried to get it to Miami but the Canal was too small for the boat (3483-4); about April 24, 1924, their records show the houseboat was at Star Island, Miami Beach, and he was living on it; the next year the house was in course of construction and after it was completed, Green went there to live and continued to live there when he was in Miami and left there to go to Lake Placid, where he died (3486). Witness identified Fla. Ex. No. 2, showing that the houseboat "Colonel" was purchased in 1924 at a cost of $160,550.06 and was sold in 1934 for $5,000 (3487); also Fla. Ex. No. 3, which showed that the "Pioneer" houseboat was purchased in March, 1923, for $107,000 and sold in August, 1925, for $55,000 (3488-9); that the "Mabel G.", a cruising boat built in New York in 1925 cost $42,500, is still in Florida; that the "Isola Stella", purchased in February, 1928, for $29,000 is still in Florida (3489-90). Said Fla. Ex. No. 3 reads as follows:

"Name of Boat	Date Purchased	Cost	Date of Sale	Sale Price
Day Dream	9/11/19	$27,792.11	6/3/34	$10,000.00
Pioneer	3/20/23	107,000.00	8/5/25	55,000.00
Fuller	7/31/18	4,000.00	6/1924	1,500.00
Lydia	9/19/18	10,000.00	.....	.....
Moonahanas	7/31/18	1,500.00	7/1920	2,800.00
Ruth-Dana	3/1918	2,000.00	5/1920	300.00
Speedboat Mary	5/19/23	9,143.37	4/7/25	6,050.00
Spindrift	4/16/24	11,777.00	4/13/25	10,000.00
Mabel G	9/7/25	42,500.00	.....	.....
Friday	8/10/25	23,548.14	.....	.....
Shark	8/27/18	350.00	6/1920	90.00
Ocie	9/4/18	400.00	.....	.....
Marion	Scrapped			

"Name of Boat	Date Purchased	Cost	Date of Sale	Sale Price
Alaska-Antillies				
Hawaii-Philippines	2/2/17	19,500.00	1920	13,200.00
Isola Stella	2/21/28	29,000.00"		

(3491.)

On further cross-examination by counsel for Florida, the witness testified that Green's purchase of jewelry was a sort of hobby; he bought a great many articles from time to time as the result of solicitation from sellers; if he thought them bargains, he would buy regardless of where he was; he bought a lot in Texas, Florida and New York (3494); when he got through looking at them they would be put in safekeeping. The witness identified Fla. Ex. No. 4, a statement of expenditures made by Green in Florida from April 17, 1924 to December 24, 1932, showing the cost of the Star Island property to be $632,651.30, and the same was given in evidence (3496-99). Said Capital Account is as follows:

"Star Island Property, Capital Acct.

Date	Name	Amount
4/17/24	Lot #22—Star Island—Miami Ocean View Co.	$32,075.00
5/23/24	Burdine & Marco—Attorneys	7.60
6/23/24	" " " "	100.00
8/18/24	James Donn—Landscape	2,126.25
9/18/24	J. I. Conklin—Engineering	3,500.00
12/ 2/24	James Betteridge & Son—Builders	3,407.00
2/ 4/25	W. C. DeGarmo—Architect	272.56
3/ 3/25	Lots #21 & #46—Miami Ocean View Co.	120,000.00
"	Fee for recording Deed Miami Ocean View Co.	4.70
4/ 3/25	Continuation of Abstracts	8.25
4/18/25	J. H. Levi—Contractor	9,000.00
6/ 2/25	M. Hampton—Architect	2,880.00
7/ 8/25	John B. Orr—Contractor	6,230.74
9/ 4/25	" " " "	9,755.77
10/ 3/25	John B. Orr—Contractor	$6,469.32
11/ 4/25	" " " "	24,857.70
"	Domestic Light Co.	200.00
12/31/25	John B. Orr—Contractor	18,534.55
"	" " " "	8,136.88
2/ 2/26	Domestic Light Co.	795.00
3/ 5/26	John B. Orr—Contractor	21,622.44

Date	Name	Amount
3/ 5/26	Martin L. Hampton—Architect	2,220.00
3/10/36	John B. Orr—Contractor	18,801.58
3/11/26	Martin L. Hampton—Architect	1,482.44
3/20/26	Edward F. Caldwell & Co., Electric Fixtures	6,480.13
9/14/26	Raphael Studio Inc. Interior Decorators	11,970.75
10/ 8/26	" " " " "	14,346.03
11/11/26	" " " " "	31,782.03
12/ 7/26	" " " " "	29,075.14
1/ 8/27	" " " " "	37,034.64
1/17/27	" " " " "	8,923.54
2/18/27	" " " " "	29,082.46
2/25/27	L. Barth & Co. Hotel Equipment	63,899.83
3/23/27	Raphael Studio Inc. Interior Decorators	17,512.38
4/25/27	" " " " "	6,195.44
4/30/27	" " " " "	3,206.50
6/ 6/27	" " " " "	857.44
6/19/28	John B. Orr Inc. Contractor	4,675.00
7/ 5/28	" " " " "	5,525.00
7/17/28	" " " " "	4,845.00
8/ 2/28	John B. Orr Inc. Contractor	$5,355.00
8/17/28	" " " " "	5,950.00
8/27/28	" " " " "	8,500.00
9/17/28	" " " " "	10,530.00
11/23/28	" " " " "	6,085.00
11/26/28	" " " " "	1,131.90
6/ 4/28	" " " " 4/21/28 "	8,160.00
"	" " " " 5/ 5/28 "	5,185.00
"	" " " " 5/19/28 "	7,225.00
"	" " " "	6,630.00
		$632,651.30

Credits:

12/24/32	Baltimore American Ins. Co.	$127.13	
"	Union Assurance Co.	31.79	
"	Liverpool, London & Globe	211.89	
"	Providence Washington Co.	169.51	540.32
	Cost of Property		$632,110.98"

(3496-99.)

Witness also identified Fla. Ex. No. 5, a statement of annual expense at the Star Island property between 1924 and 1936, inclusive, amounting to $842,324.66 (3506-7)—the principal items shown on this Exhibit being a duplication of those in Fla. Ex. No. 4. Said statement was given in evidence and is as follows (3508-9):

"E. H. R. Green's Property, Miami Beach, Florida

Year	Expenses	Principal
1924	$364.21	$41,215.85
1925	45,363.26	206,350.47
1926	53,519.40	138,575.85
1927	80,541.40	166,712.23
1928	55,943.44	79,796.90
1929	55,244.12	
1930	95,933.45	
1931	95,445.30	
1932	144,542.85	540.32 Cr.
1933	32,143.28	
1934	76,426.83	
1935	68,896.09	
1936	37,961.03	
	$842,324.66	$632,110.98"

(3508-9)

The witness also identified Fla. Ex. No. 6, a statement of Green's personal investments in Florida other than his house, boats, etc., and further testified that Green owned 760 shares of the stock of the Bank of Bay of Biscayne and made a loan to that Bank of $100,000 and at another time a loan of $750,000 (3513-15, and 3519 and 3556). Said statement is as follows (3518-19):

"E. H. R. Green's Florida Interests

4/12/28	John Sewell & Brother Mortgage		$50,000.00
7/16/30	Charlotte E. French Mtg. $7,500.00 now		3,000.00
4/8/27	Fogal Dry Dock & Storage Co.	$38,000.00	
4/13/27	" " " " " "	62,000.00	
4/18/28	" " " " " "	15,000.00	
			$115,000.00
4/23/28	Maurice Van Weintraub Loan	$3,000.00	
6/13/28	" " " "	5,000.00	
8/30/29	" " " "	1,500.00	
		$9,500.00	

"E. H. R. Green's Florida Interests—Continued

4/22/29	Paid on Acct. Prin.				$1,200.00		
12/5/29	"	"	"	"	300.00		
2/8/30	"	"	"	"	300.00		
4/25/30	"	"	"	"	100.00		
5/7/30	"	"	"	"	100.00		
9/8/30	"	"	"	"	50.00		
12/2/30	"	"	"	"	50.00		
						$2,100.00	
	Advanced on Insurance Premiums					$7,400.00 2,403.65	
							$9,803.65
5/26/32	Morton Fogal Mtg. Loan						$16,000.00
4/9/28	Miami Beach First National Bank 100 shs						$27,500.00
4/9/28	First National Bank, Miami, Fla. 100 shs						$25,000.00
8/30/30	Bath Club Membership Ctf						1,500.00
12/1/32	Cocolobo Cay Club 2 shs						$4,000.00
8/30/30	Surf Hotel Corporation 10 shs V. T. Ctfs						3,000.00"

(3518-19.)

The witness further testified that Green's apartment at the Waldorf-Astoria was on the eighth floor and in the Sherry-Netherland on the twenty-fourth floor (3519-20); that Green had a new Lincoln automobile delivered to him at Miami in 1936 just before leaving for Lake Placid, which was sent to Lake Placid (3520-1).

Counsel for New York thereupon gave in evidence Exs. Nos. 81 to 84, regarding Green's occupation of an apartment at the Waldorf-Astoria and the charges therefor (3527-32).

In response to further questions by counsel for New York, witness testified that after the death of Colonel Green, Mrs. Green continued to live at Round Hills for about six months and when possession was taken by the Temporary Administrator she ceased to live there (3534); that Green did not dispose of his stamp collection and a large number of stamps were in New York in the Apartment House; that in most years his contributions to charity exceeded the 15% allowable deduction from income tax (3536); that if he had not made the contributions his taxes would have been larger; that he was in the bracket of from $300,000 to $600,000, it varied and the rates varied in different years (3537); that contributions of $2,500 to the Association of Stamp Exhibitions, Inc., and the Collectors Club in 1926 were personal items, and would not be reflected in the statement of New York contributions (3538); during the years 1935 and 1936, Green spent approximately $110,000 for stamps (3539).

N. Y. Ex. No. 85, dated July 15, 1935, from Green to Frederick A. Newman, Miami, Florida, was given in evidence, in

which he enclosed a check for $5,719.42 to cover the bill for stamps dated July 6, 1935 (3543).

Thereupon counsel for Texas gave in evidence Tex. Ex. No. 330, application by Green and license issued by Massachusetts for the transfer of a Benz automobile in 1926, in which it was stated under "Owner's Name and Address"—"Name—Col. E. H. R. Green, Street—Round Hills House; City—South Dartmouth, Mass." and his legal address "Terrell, Texas" (3546-8). Also as Tex. Ex. No. 331, a memorandum dated December 10, 1923, between Hetty Sylvia Ann Howland Green Wilks, of New York City, and Edward Howland Robinson Green, residence, "Terrell, Kaufman County, Texas," regarding the donation of $500,000 by them to Wellesley College (3550-1); also Tex. Ex. No. 332, a letter dated November 18, 1926, from Green to Miss Amelia H. Jones, of New Bedford, Massachusetts, in which he said, among other things (3552-4):

"I appreciate very much the sentiment expressed in your letter, but as I am really not a citizen of New Bedford and am called upon for the Community Funds in both Florida and Texas, where I have homes, and, furthermore, as the people in Florida have suffered as much or more than those in New Bedford, after careful consideration I do not feel that I can consistently increase my donation for New Bedford over that of last year. Therefore, I beg to enclose herewith my check No. 7271 on the Seaboard National Bank for $2,000.00, which was the amount of my 1925 donation" (3554).

The witness further testified, in response to questions by counsel for Texas, that Green's subscription to the First Liberty Loan of 1917-18 was made through the American National Bank at Terrell, Texas, and several in New York through different banks and organizations; that the New York subscriptions were about $3,000,000 or $3,500,000 and that made through the bank of Terrell, Texas was $5,000,000, of which about $4,500,000 was delivered (3555).

Upon further cross-examination by counsel for Massachusetts, the witness testified that vouchers for expenditures at the South Dartmouth house began to come in about 1917 and for the radio about two or three years prior to the formation of the Radio Corporation or about 1922; that of the boats listed on Fla. Ex. No. 3, the "Day Dream," "Ful-

ler," "Lydia", "Moonahanas," "Ruth Dana," "Shark," "Ocie," "Marion" and the four tenders for the yacht "United States" were in Massachusetts waters (3557-60); that the yacht "United States" was purchased in the Fall of 1916; went into commission in July, 1917, and she had to be brought through the Great Lakes; that the cost of the "United States" net was $794,450.66; that she was registered as having a home port at Galveston, Texas; was brought to New York waters, in the Summer of 1917, a trip made to Buzzards Bay, subsequently came back to New York waters, later was used for a trip to Galveston about December, 1917, and January, 1918, returned to New York waters and subsequently taken to South Dartmouth and kept there until she sank in Padanaram Harbor August, 1919 (3559-62).

Counsel for Florida gave in evidence Fla. Ex. No. 25, a list of contributions made by Green within the State of Florida Between February 21, 1925 and January 25, 1936 (3576-8). Said list is as follows:

"E. H. R. Green Payments Within State of Florida

Date	Name	Charged to Contributions	Charged to E. H. R. Green Personally
2/21/25	Community Church		$1,000.00
10/18/26	Miami Beach Chamber of Commerce		1,000.00
3/25/27	Miami Community Chest	$1,000.00	
9/17/27	Subscription to Chamber of Commerce Booklet		
11/19/27	Mahai Temple Shrine Convention Fund		300.00
2/ 1/28	Miami Beach Chamber of Commerce		1,000.00
2/21/28	Miami Community Chest		1,000.00
1/22/29	Miami Beach Chamber of Commerce	1,000.00	
2/ 1/29	Red Cross		1,000.00
4/ 1/29	Dade County Boy Scouts	1.00	
4/ 1/29	Community Chest	25.00	
4/ 1/29	L. Lawry Wall-Community Chest	500.00	
1/20/30	Committee of One Hundred	500.00	
1/23/30	Committee of One Hundred	500.00	
1/27/30	Junior League	125.00	
"	"	500.00	
1/28/30	Miami Beach Chamber of Commerce	20.00	
3/ 3/30	Community Church	1,000.00	
5/23/30	St. Patrick's Church	250.00	
5/27/30	Miami Jr. Chamber of Commerce	100.00	
12/24/30	Miami Empty Stocking Fund	3,000.00	
1/20/31	American Legion	500.00	
1/28/31	Miami Beach Chamber of Commerce	10.00	
2/ 6/31	Community Church	1,000.00	
5/ 6/31	Committee of One Hundred	250.00	
1/14/32	Temple of Israel Sisterhood	75.00	
1/20/32	Miami Beach Chamber of Commerce	10.00	
1/29/32	Florida Peace Officers Assn.	1,000.00	
2/ 3/32	National Council of Jewish Women	50.00	
2/ 4/32	Junior League	10.00	
2/ 4/32	Veteran Assn.	200.00	
2/ 5/32	Dade County Community Chest	2.00	
		250.00	

"E. H. R. Green Payments Within State of Florida--Continued

Date	Name	Charged to Contributions	Charged to E. H. R. Green Personally
3/ 4/32	Miami Beach Community Chest	$250.00	
4/ 1/32	Miami Unemployment Fund	15.00	
1/23/33	Miami Beach Chamber of Commerce	1,000.00	
2/28/33	Community Chest, Miami	1,000.00	
5/ 5/33	Jackson Memorial Hospital, Miami	5,000.00	
1/ 6/34	Veterans of Foreign Wars		$10.00
1/22/34	Miami Beach Chamber of Commerce		1,000.00
3/ 2/34	Miami Beach Welfare Assn.		4.00
3/17/34	Community Church	250.00	
3/11/34	Emunah Chapter O. E. S.		5.00
1/24/35	Miami Beach Chamber of Commerce		1,000.00
2/ 1/35	Community Church	250.00	
3/23/35	Saint Francis Hospital	100.00	
1/25/36	Miami Beach Chamber of Commerce	1,000.00	
		$20,743.00	$7,319.00"

(3576–78.)

Said witness further testified that an examination of his records show that Green gave up his polo box in New York City in the Spring of 1927 and that his records did not show any sales of stamps from his collection after he stopped purchasing (3581-2).

Ernest Temple Love, of New Jersey, testified that he was an Assistant Cashier of the Chase National Bank and had been since 1921; that the Seaboard National Bank changed its name to the Seaboard Bank and the latter was merged with the Equitable Trust Company and the Equitable Trust Company in turn merged with the Chase Bank; that the Equitable-Chase Merger occurred in 1930 and the other mergers preceded it by a few years; that the records of the Seaboard are in the custody of the Chase; that he had examined the records to ascertain the attendance of Green at meetings of the Board of Directors; that Green was elected a Director of the Seaboard July 7, 1910, and became a member of the Boards of the other institutions into which it was merged, and from an examination of the records from which on witness had prepared N. Y. Ex. No. 14, which contained a complete record of all meetings of the Seaboard National Bank, the Seaboard Bank and the Equitable Trust Company during the period that Green was a Director in those institutions and showed when he attended the meetings of the Board between July 14, 1910 and May 20, 1930 (3589-94). Said Exhibit was given in evidence and is set forth in the Record at pp. 3594-3626.

On cross-examination by counsel for Texas, the witness testified that this record showed that after 1921 Green did not attend any meetings of the Directors; that the last Directors' meeting he attended was October 20, 1921 (3629).

On cross-examination by counsel for Florida, the witness testified that his statement ran to 1930 and he did not examine the records between that date and 1936 when Green died (3630), but that Green was a Director of the Chase Bank during this latter period. Counsel stipulated that during that period from 1930 to 1936 Green attended no meetings (3630).

On redirect examination by counsel for New York, witness testified that Green was elected a member of the Board of the Chase National Bank as an incident to the merger with the Equitable (3633).

In response to counsel for Florida, witness said he had never seen Green in the Chase National Bank; that his office was on the ninth floor and the Directors' room on the fourth floor and unless he happens to be on the officers' elevator on the first floor he does not see them; that he did not know Green personally and does not recall ever having seen him (3633-4).

Lawrence Sturgis, of New Jersey, testified that for five years he was associated with the Secretary of the Board of Directors of the Irving Trust Company and in that capacity had access to all of the records and that he is now connected with the Secretary's office; that the Irving Trust Company is the successor of the Columbia Trust Company of the City of New York and became such February 7, 1923, through the merger; at that time it assumed the name Irving Bank-Columbia Trust Company; in 1926, there was a further merger and the institution's name became the American Exchange Irving Trust Company; in 1929, the name was changed to the present title—Irving Trust Company, which is in possession of the records of the Columbia Trust Company, including the minute book of the Board of Directors; that Green was a Director of the Columbia Trust Company from February 6, 1912 through 1919, was re-elected January 21, 1920, but did not qualify; that witness has examined the records and prepared a schedule showing the meetings of the Board and the attendance of Green during this

period; the Executive Committee, of which Green was not a member, held meetings at other times and he has examined the records of those meetings and prepared a schedule, N. Y. Ex. No. 15, which was given in evidence and is set forth in the Record at pp. 3641-46.

Witness further testified that he was connected with the Columbia Trust Company from March 15, 1918; that he did not know Green. On cross-examination by counsel for Massachusetts, witness said that according to N. Y. Ex. No. 15, the last meeting of the Board of Directors attended by Green was February 20, 1919, and the last meeting of the Executive Committee he attended was August 28, 1919 (3646-7).

William C. Cox, of New York City, testified that he was Vice President of the New York Produce Exchange Safe Deposit & Storage Company and started with the institution in 1927; that it has complete records through 1916; that Green was a Trusteee of the Company, elected May 5, 1914, and continued as such until his death (3650-1); that he was also a stockholder, owning thirteen shares acquired in 1914 and 1916; that his address given on the records when he acquired his stock was 7 West Ninetieth Street, New York City, and at the time the last shares were issued to him, it was 111 Broadway, New York City; that witness prepared from the records a statement showing the attendance of Green at meetings of the Board of Trustees from May 6, 1914 to January 9, 1918, since which latter date Green did not attend any meetings (3653). Said statement was given in evidence as N. Y. Ex. No. 16 (3654-8). Witness further testified that he did not know Green personally and has no recollection of ever having seen him (3658).

Saul Dubov, of New York City, testified that he was the Auditor of the Moorebilt Garage Company which runs the Commodore-Biltmore and had made a complete audit of the Garage from the time they commenced business and had prepared a ledger sheet from June, 1928 (the time when the Moorebilt Garage Company took over the Commodore-Biltmore) to June, 1933, the last date the Green cars were in; that the records of the prior Company were

not in their possession; that these records show Green kept in the Commodore-Biltmore Garage two Lincoln cars from June 30th, 1928 to June 30th, 1930 (3659-62); from July 1, 1930 to June 30, 1931, one car; for the period from June 30, 1931 to June 30, 1933, the records indicate he may have had one or two cars; during 1931, the car was in in June and December—two months; in 1932, the car was in three months—January, June and December; in 1933, in May and June (3664-5); that the type of service is known as full servicing, that is, cleaning, washing and storage—live storage, which means the car was ready for use at any time (3665); the numbers of the cars indicate New York licenses (3666).

Witness further testified that he did not know Green and had never seen him (3668). Phtotostats of the ledger sheets produced by witness were given in evidence as N. Y. Ex. No. 17 (3683-5).

L. M. De Vausney, of New Jersey, testified that he was connected with the Stock Exchange Firm of T. L. Watson and Company, New York City; was formerly with the Seaboard National Bank and was well acquainted with Green in a business way (3687-8); that he first met him at the Seaboard Bank in New York when witness was Assistant Cashier and later Vice President and Director; that the Bank was then located at 18 Broadway; that he met Green when he came in the Bank with Mr. E. M. Reardon, of the American Exchange National Bank of Dallas, Texas, their correspondent; the Seaboard later moved to 59 Broad Street; while at 18 Broadway, Green spent considerable time in the Bank; he would come in frequently during the week and stayed from ten minutes to two or three hours (3688-9); that Green became a Director about 1909 and remained through the consolidations and was a Director of the Chase Bank (3690); that when he was there he attended to any business he had to do and at 18 Broadway, he had a chair between the President's desk and that of one of the Vice President's—a rather large chair—and transacted business mostly with officers of the Bank, but people came in sometimes to sell him bonds (3691); that witness has visited Green at the Waldorf-Astoria and the Sherry-Netherland Apartments about business matters and also occasionally went to the baseball games with him

(3693 and 3697); that he also visited him at Round Hills and in riding around with him there one day he asked him what was to become of the place and his best impression is he said he intended it to go to the State of Massachusetts some time for a hospital or museum of some sort, but cannot give his exact words (3700 and 3711-13).

On cross-examination by counsel for Texas, witness testified that in the oath Green signed as Director, he gave "Terrell, Texas," as his residence (3703); that the last time he saw Green was in the Summer of 1930 or 1931 (3704); that he discontinued coming to the Bank about 1922 or 1923 and from then on was seldom, if ever, there; that witness made about a dozen trips to Round Hills (3705).

On cross-examination by counsel for Florida, the witness testified that he did not see Green more than a dozen times after 1920 or 1921; that witness would have to go where he was about certain transactions, but they were very few (3708).

On cross-examination by counsel for Massachusetts, the witness testified that the business Green transacted at the Bank was in connection with the investment and reinvestment of the securities of himself and his mother and the usual banking business connected therewith (3718).

Henry Stewart Price, of New York, testified that he was a member of the Technical Staff of the Bell Telephone Laboratories, Inc., of the City of New York; that he first met Green in the Summer of 1922, while witness was the engineer of the Western Electric Company assigned to the installation of certain broadcasting stations they were constructing at Round Hills, Massachusetts; he was engaged there from about the middle of July until some time in December, 1922, and constructed two stations (3722); in subsequent years when Green began broadcasting, usually about the 1st of July, witness was assigned to inspect the equipment and did that regularly for four years and on two other occasions until about 1926, the last visit; that he was friendly with Green and that the Colonel told him in a conversation about Round Hills that he intended it eventually to be some sort of a technical educational institution

(3723-5); that Green told him that the house was built with steel columns and beams similar to an office building which would permit the removal or relocation of entire walls or partitions; that this came up in discussing various methods of building construction relative to the new radio station building (3725); that there was some informal broadcasting from the small station from August, 1922, and the large station went into service the latter part of November or December, 1922, and broadcast during the Summer season —the periods of the Colonel's visits; that about 1926 or 1927, the broadcasting ceased and so far as witness knows the station has not been used since; that he saw Green a number of times in New York City and made one visit to Miami Beach about 1925 (3726-8); that Green called South Dartmouth his "Summer home" and his Florida home his "Winter home" (3728-9).

On cross-examination by counsel for Florida, the witness further testified that the Round Hills building contained a room equipped as a broadcasting studio adjacent to the radio transmitter room; that the large station operated continuously for two or three years; it was one of the first stations to take wire programs distributed from New York (3736); that the station was only operated during the Summer months and as the demand for wave lengths became larger, the Government could not spare a part-time assignment and both stations were closed (3737); when witness was there, there were two or three students from the Massachusetts Institute of Technology; Green allowed certain students to use the small station for experimental purposes (3738-9); that the house contained probably fifteen or twenty rooms but witness had only seen the first two floors; that Green said he intended to turn it over to the Massachusetts Institute of Technology (3740); when witness visited the Star Island home in 1925 or 1926, it was completed; he made two calls on the Colonel during one visit to Miami Beach (3741); it was a large, elaborate and beautiful home and one of the outstanding private residences in that section; the grounds had the appearance of a private park (3742); that witness did not see any radio stations there or anything other than would be found in a fine outstanding private residence; the grounds were beautifully decorated with shrubbery and the house elaborately furnished (3743); that he called upon Green in the Spring and Fall when he was in New York and visited Round Hills for two or three years about July

1st, when the radio stations were opened for the Summer before the licenses were terminated (3744).

On cross-examination by counsel for Massachusetts, the witness identified Mass. Ex. No. 48, "The Voice From Way Down East," which was published and widely distributed with Green's approval. The same was given in evidence and is set forth in the Record at pp. 3751-58. Counsel for Massachusetts read the following, among other extracts, from said publication:

"When the Mayflower landed at Plymouth on December 21, 1620, she had as cabinboy a lad named John Howland. Five years later, having come to man's estate, young Howland was allotted a tract of land on the west side of Buzzards Bay, running from the site of the present city of New Bedford to the open sea. At the southern end of this great tract was a rocky point whose two rounded hillocks were a landmark to sailors. Eventually this portion of the tract was known as Round Hills Farm, and as such it has remained within the Howland family continuously, its present owner being Edward Howland Robinson Green. Within recent years Colonel Green has established there his summer home 'Round Hills House.'

Colonel Green's interest in radio began in 1896. Learning of Marconi's transatlantic experiments, he attempted to adapt the new art to railroad use. Two baggage cars of the Texas Midland Railroad, of which he was President, were equipped with receiving sets and a sending set was installed at Terrell, Texas. The old metal-filings coherer was not satisfactory on a moving train but messages were handled for some months between two fixed stations eleven miles apart" (3760-61).

The witness stated that what had just been read was what had been stated to him in substance by Green (3761); he further testified that the pictures in this Exhibit were fair pictures of the buildings, equipment, etc.; that the direction finding equipment referred to in the brochure related to the equipment he purchased for locating the position of other radio stations, presumably ship stations (3762-69); that Green had a vital interest in this enterprise and had considerable scientific knowledge, followed the installation of the equipment, not only the broadcasting but the scientific aspect of it (3772).

Mass. Ex. No. 49, as well as the agreement made by Green as President of the Round Hills Radio Corporation June 8, 1922, for radio telephone transmitting apparatus was given in evidence (3774-80). In response to questions by counsel for New York, witness further testified that Green remained at Round Hills until December, 1922, because he was interested in seeing this radio station completed (3784).

N. Y. Ex. No. 18, a letter from the Round Hills Radio Corporation, dated June 30, 1923, enclosing a program for July 3rd and 4th to be broadcast from New York City was given in evidence (3786).

Dr. Henry S. Pascal, of New York City, testified that he had known Green since 1921 (4126); had treated his mother and also had treated Mrs. Stafford, then living with the Greens at the Waldorf-Astoria Hotel (4127). Witness identified the history record of Green made November 6, 1921, N. Y. Exs. Nos. 32 and 32-A for identification (4129-30), and testified that Green then resided at the Waldorf-Astoria in New York City; that his general condition was then pretty good but he complained of stiffness of the right knee; upon further examination, witness found he was suffering from extreme anemia, due to bleeding from the rectum and had a marked condition of infected teeth; the heart and lungs were normal (4133); he had lost his left leg, which was amputated when he was about twenty-one years old, following a swelling of the knee subsequent to an accident when he was coasting at the age of seventeen; that he had gone around just the same and kept hurting the knee off and on until two years after the accident when a boy jumped on his back playing leap frog and from that time on he had to wear a knee brace, when he was in Fordham University in the Bronx, New York City, and about a year later, when he was twenty-one, Dr. McBurney amputated his leg above the knee (4134-5); that after a blood urine laboratory examination, witness diagnosed Green's condition as traumatic arthritis, caused partially by sepsis from the teeth and bleeding from the rectum, which lowered his resistence and the trauma was due to the fact that every morning before putting on his artificial leg he would hop around on his other leg and being a heavy man, weighing 250 or 260 pounds, it jarred the knee and

aggravated his condition causing the arthritis; on November 22nd, witness operated and gave him a transfusion at the Waldorf-Astoria, assisted by Dr. Unger (4137-8); about two years later, January 29, 1923, he sent Green to St. Elizabeth's Hospital in New York City for an operation; meanwhile, he had all of his teeth removed following the examination in 1921 (4139); between the first visit and the time he went to the hospital, witness saw him about fourteen times at the Waldorf-Astoria; after the operation at the hospital all bleeding stopped and his general condition improved somewhat; about February 12, 1923, witness gave him another transfusion (4143-4); he saw him frequently from May 19th to June 29th, 1923, then again from November 15th to December 26th of that year and in between used to correspond with him and give him advice; he saw him again June 20th and December 30th, 1924 (4145); his relationship with Green was very friendly; when witness had the time he would spend hours in the evening talking with him; he was very interesting to talk to; witness became his family physician (4147); about August 17, 1925, he received a hurry call from Round Hills, Massachusetts and three days later gave Green a transfusion and saw him there several times (4147-8); saw him again five times in June, 1927, at the Waldorf-Astoria, New York; did not see him in 1928 or 1929 but on July 29, 1930, witness had another hurry call from Round Hills and on July 31 again gave him a transfusion; from July 29th to October 5th, witness made fourteen calls at Round Hills (4151); saw him at the Sherry-Netherland in 1932 and had a hurry call to Round Hills September 15, 1932; his heart was then very bad; saw him several times in September and October and sent him to Lake Placid (4151); that Green told him he hated to leave his old home at the Waldorf-Astoria—he considered it his home for so many years (4152); on November 6, 1921, witness's office was in the old Navare on Fifty-Eighth Street, New York City, and Green walked up a flight of stairs into witness' apartment; Green had a stamp collection at the Waldorf-Astoria and spent most of his time on it; he had three or four large safes or vaults where he kept his collection, working on it almost all day and night; that was his hobby (4152); at the Sherry-Netherland his apartment comprised the whole twenty-fourth floor—one wing was Mrs. Green's and the other was

Green's, which commanded a view of Central Park; witness saw the same safes he had seen at the Waldorf-Astoria at the Sherry-Netherland (4153); at the Sherry-Netherland, he was also interested in stamps and discussed them with witness (4153); when witness was called to Round Hills, he was there all of the time and saw Green three or four times a day; saw him at Lake Placid in October, November and December, 1932, at the Lake Placid Inn; saw him again in New York in January, 1933, nearly every day from the 1st to the 19th (4155); from January to June, witness corresponded with him at Miami and Lake Placid regarding his health; Green did not discuss his Massachusetts place particularly; witness saw the general character of the grounds, his activities there, etc.; witness sent him to Asheville, North Carolina, where he remained from November 5 to July 10, 1930, but he did not like it there and in subsequent years witness sent him to Lake Placid, which he preferred; the last time he saw him was June 30th, 1933, in New York at the Sherry-Netherland (4156-8); from 1921 on Green's health got worse every year from his habit of taking drugs of which witness did not approve (4158).

On cross-examination by counsel for Texas, witness testified that when he first saw Green in 1921, notwithstanding his apparent disabilities, his physical condition was such that he could have lived until ninety if he had taken care of it (4160); from 1921 to June 30, 1933, there was a general decline owing to his arthritic condition, which got worse; the anemic condition also pulled him down (4160); witness advised a change to a warm climate whenever possible and told him it might do him good in Florida, but also recommended to him Asheville, North Carolina and Lake Placid, New York (4162).

On cross-examination by counsel for Florida, witness testified that he did not know anything about Green's whereabouts or condition between 1933 and the time of his death (4164); that in the years when he was attending him, cold, wet, damp weather did not do him much good and that is why he took him away from Round Hills in the Fall of the year to a climate that was not so damp; Round Hills was damp, cold and piercing and witness advised him to go to a drier, even if cold, climate and referred him to Lake Placid or Asheville (4165-69); that he responded to his treatment when he got off the drugs that harmed him

(4165); in the earlier years of witness' attendance Green walked around with difficulty but in the latter years he was in a wheelchair, but attended to considerable business; witness first saw him in the wheelchair in June, 1933, the last time he saw him (4166).

On cross-examination by counsel for Massachusetts, witness testified that if Green went from South Dartmouth to Asheville, North Carolina, about November 5, 1930, it was under witness' advice; in 1932, from September 15th to October 12th, witness saw him at South Dartmouth and as the result of his condition advised him to leave South Dartmouth and go to Lake Placid (4168); on January 17, 1923, he operated on Green at the St. Elizabeth's Hospital and gave him a blood transfusion February 12th, and if he went to Miami, Florida, in March of that year, it was by his advice (4169); there was nothing in his condition to have prevented him from going to Texas had he so desired, any more than anywhere else; witness never advised him not to go to Texas (4170); the acute attacks when witness was called in in a hurry, as he had testified, were due to acetanilid poisoning induced by excessive use of bromo-seltzer (4170); in 1921, when he first saw him, the bleeding and absorption of septic poisoning from his teeth, in addition to his other habits, had reduced his resistance, but he had a wonderfully strong heart, good lungs and kidneys, which are the essentials of a man in good health (4170); the "other habits" might be termed "high living"—he told witness he had been a pretty lively boy in his younger days (4171); the first heart complaint witness found was September 15, 1932; he had myocarditis—a weakening of the heart muscle (4172).

On cross-examination by counsel for Mrs. Wilks, witness testified that he had advised Green to keep out of the dampness of the Massachusetts climate in the late Fall and early Winter; he never advised him about it in the earlier years because he did not consider it did him as much harm as in later years, when he became very stiff (4177).

On further examination, witness said that Green went to Miami the first time by his advice in March, 1923, after the transfusion in February of that year; that he had been in New York that Winter up to that time (4182-3).

N. Y. Ex. No. 32, Dr. Pascal's record of Green, was then identified by the witness and given in evidence (4187).

CHARLES J. WALLACE, of Port Chester, New York, testified that he was Manager of the Corn Exchange Bank, the Ninety-First Street and Broadway Branch; was employed by the Bank in 1910, which was then at Ninety-Second and Columbus Avenue (4191-2); that Green had an account there and identified his signature card, N. Y. Ex. No. 33, account dated August 23, 1911, giving his address—111 Broadway, New York City, showing the account was closed April 27, 1929, about the time it was absorbed by the Bank of the United States (4194); also identified N. Y. Ex. No. 34, signature card of Mrs. E. H. R. Green at the Colonial Bank, Eighty-First and Columbus Avenue, dated July 25, 1917, address, care of Westminster Company, 111 Broadway, New York City, and on the back "Address, 5 West Ninetieth Street," as well as "111 Broadway," showing account transferred from Mabel E. Harlow. Also identified N. Y. Ex. No. 35, signature card of Miss Mabel E. Harlow for the Colonial Bank, Columbus Avenue and Ninety-Second Street, New York City, giving the address on the reverse side, 5 West Ninetieth Street (4201-2).

HENRY F. WOELFLE, of New York City, testified that he had been Tower Apartment Manager of the Waldorf-Astoria now located at Fiftieth Street and Park Avenue from 1932, was Assistant Manager between 1929 and 1932 and before that had been employed at the old Waldorf-Astoria at Thirty-Fourth Street and Fifth Avenue, New York City, since his eighteenth year (4208-11); that he knew Green when he lived at the old Waldorf; that Mrs. Green, Mrs. Stafford and some others lived in the apartment with him; that his apartment was on the eighth floor; he had five or six rooms, in the same corner with the suite of the proprietor, Mr. George Bolt, and faced South and East (4212); witness was at the Sherry-Netherland as Assistant Manager when Green moved there in 1929 and identified N. Y. Ex. No. 36, registration card of Green at the Sherry-Netherland showing his arrival May 1, 1929,—Apartment, 24 Tower; Rate $27,000 per year (4215-16-17).

On cross-examination by counsel for Texas, witness testified that on this occasion Green asked him to register for him as "Colonel and Mrs. Green, City" (4220).

On cross-examination by counsel for Massachusetts, the witness identified Mass. Ex. No. 50, dated March 14, 1931, addressed to Green, signed J. O. Voit, Manager, Sherry-Netherland, regarding the occupation of the apartment on a monthly basis of $2250 a month after the expiration of the lease April 30, 1931, and the same was given in evidence (4223).

Mass. Exs. Nos. 51 and 52, relating to the same subject were also given in evidence (4228-29).

On cross-examination by counsel for Florida, the witness further testified that when Green and Mrs. Green were occupying this apartment, they were given the regular hotel service as guests—hotel service went with the apartment (4232).

On redirect examination by counsel for New York, witness testified that there were no facilities for cooking meals, the apartment was only equipped with a serving pantry (4232); that the Sherry-Netherland is one of the finest Hotel Apartments in New York of its type; that 60% of the guests are there on a permanent basis—people live there by the year and make it their residence (4233); that on May 1, 1929, when Green came there to live, rentals for hotel apartments were high, after that prices went down (4233-4). In response to questions by counsel for Florida, the witness further testified that he left the Sherry-Netherland around 1931 and that Green and Mrs. Green were there approximately a month in the Spring and a month in the Fall while he was there (4235-6).

William K. Cleverley, of Brooklyn, New York, testified that from 1883 until he retired in 1931 he was connected with the Seaboard and Chase National Banks, starting as messenger with the Seaboard and becoming First Vice President; that he first met Green about 1908 or 1910 in Dallas, Texas, at the American Exchange National Bank, which was a correspondent of the Seaboard (4244-6); witness made his headquarters at the Bank and met Green, who was generally around there; that he had a box at the ball game and invited him to go with him; he usually found him sitting in President Reardon's office, talking with people as they came in and out; later he saw him in New York when he became a Director of the Seaboard about

1910 (4247-9); Green had a chair there next to witness—he would come and go about as he did at the Dallas Bank; witness went to a few ball games with him in New York; he had a box at the Polo Grounds (4250); Green was a very heavy man and had a chair especially built for him at the Bank; he refused to have a desk when he came there; the understanding was he was to make their institution his headquarters; his chair was located between that of the witness and the President (4251); when in town he was generally in the Bank; he had no connection with it outside of the Directorship; he made purchases of securities through the Bank; the accounts of Green and his mother were substantial, running into millions of dollars at times (4254); Green had a box at the theater in Dallas and also attended shows frequently in New York (4254-5); he continued to use his chair at the Bank from the time he became a Director until he was taken sick, when he began to drop off coming; some days he would stay five minutes and then another day he would stay all day (4256); witness was Secretary of the Board of Directors of the Seaboard and Green attended pretty regularly (4257); witness had never been to Round Hills but on one occasion Green mentioned that he had not made up his mind as to what to do with the Round Hills house when he got through with it but that it was so constructed it could be turned into an institution—a hospital—and he referred to the fact that the elevator was large enough to wheel a patient in on a stretcher (4260).

On cross-examination by counsel for Texas, witness testified that during the time he was Secretary of the Board they happened to have a number of non-resident Directors; by the law, they were limited to 25% within 50 miles of New York (4261 and 4263).

On cross-examination by counsel for Florida, witness said he did not know whether Green was classed as a resident or non-resident Director (4263).

On cross-examination by counsel for Massachusetts, he testified that after Green's injury in 1921, he stopped attending Directors' meetings and when he visited the Bank he frequently called for some one to come out to his car at the curb (4265-6).

On cross-examination by counsel for Mrs. Wilks, witness stated that after 1910 he met Green in Texas about May,

when he was attending Directors' meetings of the Bank at Terrell, the Murray Company at Dallas, or the American Exchange National Bank and the Texas Midland Railroad (4267-8).

Louis P. Lengeman, of New York City, testified that he was a Clerk in the Department of Taxes and Assessments, New York City, and had made an examination of the records of his Department to determine whether an assessment for personal property for the year 1917 had been made against Green and found that a tentative value assessment had been made and afterwards cancelled; that the records of affidavits and statements prior to 1919 were all destroyed (4278-9).

On cross-examination by counsel for Massachusetts, witness said that from an examination of Tex. Exs. Nos. 77 and 78, affidavits made in November, 1916, in which Green said he was a non-resident of New York, indicated that was the reason the assessment was cancelled (4282).

Lawson Purdy, of New York City, testified that he was President of the Department of Taxes and Assessments of the City of New York, which had charge of all personal property assessments, from December, 1906 to January 1, 1918 (4284-5).

Witness explained the method of assessing and cancelling assessments then in effect (4286-4290), and stated that persons who were assessed and wanted the assessment cancelled or reduced appeared before the Commissioners or one of the Assistants and made statements under oath; in some cases, affidavits were presented in lieu of personal attendance (4289-90).

After examining Tex. Exs. Nos. 32 and 33, he further testified that if they had been presented to his Department by a reputable attorney he would have considered them sufficient to vacate the assessment of personal property made against the Estate of Hetty H. R. Green or against Colonel Green (4291).

William R. Wiener, of Woodhaven, New York, testified that he was Chief Clerk of the Bureau of Motor Vehicles,

Department of Taxation and Finance of the State of New York and had been connected with the administration of the Motor Vehicle Law since September 16, 1910; that the registration numbers for the year 1932—37,786-87-88 were issued at the same time (4299-4300).

James P. Flynn, of Stewart Manor, New York, testified that he was the Assistant Treasurer of the Central Hanover Safe Deposit Company and also employed by the Central Hanover Bank and Trust Company. He identified N. Y. Ex. No. 88, a photostat copy of a contract card for safe No. 2173, rented by Mrs. E. H. R. Green in the vault of the Central Union Safe Deposit Company and the same was given in evidence (4302). The card was dated May 6, 1929, bears the signature "Mrs. E. H. R. Green" and residence "Sherry-Netherland" and recites "Surrendered 1935."

Thomas T. Sturgis, Jr., of Scarborough, New York, testified that he was in charge of the safe deposit vault of the Irving Trust Company, Fifth Avenue Branch, the successor to the Knickerbocker Safe Deposit Company, which was successor to the Columbia Trust Company and has the records of the Knickerbocker. He identified N. Y. Ex. No. 89, a photostat copy of contract card covering rental of safe No. 363 by Mrs. Mabel H. Green June 12, 1918, surrendered May 6, 1929, with the Knickerbocker Trust Company and the same was given in evidence (4309). Said card showed upon its face "Pass Word: Terrell, Address: Waldorf-Astoria, N. Y. C. Business: Bills to 111 Broadway, N. Y. C." (4310), also "Date Taken: June 12, 1918," and names as deputies "E. H. R. Green, Mary C. Stafford (Mrs. T. S.)" (4311).

Peter John Anton Van der Putten, of Ocean Grove, New Jersey, testified that he had known Green since 1915 or 1916 and decorated his yacht "United States" at the dry dock at Brooklyn, New York; that in connection with this work he called on Green at 5 West Ninetieth Street (4319-21), where he was living with Miss Harlow and the

servants; it was scantily furnished; there were some nice pieces there, especially one beautiful clock; that the decoration of the "United States" occupied eight months and subsequently Green consulted him about the furnishing of Round Hills (4322); he did the decoration of Round Hills and had to go to the architect's office daily about the specifications (4323); witness did not like the woodwork because it looked very much like an institution, it was four feet high all around the downstairs rooms like in an institution; when he mentioned this to Green, he said, "You know when I am finished with it, I am going to give it to the City of New Bedford for an old women's home" (4324); the house was to have been finished in six months and witness' furniture, carpet and draperies were finished but could not be taken to it because the house took one year and eight months to complete (4326); it was well furnished; witness had a small truck full of furniture shipped from 5 West Ninetieth Street—the two clocks and private things of the Colonel; the furniture was too ordinary to be used, but he took a lot of pictures (4327); witness supplied the electric fixtures and asked Green why he had so many outlets which he did not need and he said, "Well, Van, I told you I would make it an old woman's home and if they want to build rooms they need outlets and all they have to do is to put up partitions and they can find the outlets on the blueprints" (4328); after the first year he occupied Round Hills, witness asked him, "How is it that you stay there so little" and he replied, "That is all I want; if I stay there too long I may have to pay taxes;" Green referred to it as his Summer home lots of times; after the large house was built, one evening Green told him Mrs. Green did not care to live in the big house and would rather like to have a small place and at Salters Point there is a high knoll and on that high knoll he intended to build another place for Mrs. Green, a ten room house (4329).

On cross examination by counsel for Florida, witness testified that he completed the decoration of Round Hills about June 21, 1921, and Green occupied it immediately; that the woodwork was the kind you can find in any old women's home—in any institution; witness spoke to Green about it many times; if he was mad, he would say, "Leave me alone, this is an old woman's home anyway" (4332); that it was about a year after he went into the big house that he spoke of building a small house for Mrs. Green; when witness

criticised the ceiling outlets Green said, "It belongs to the old ladies' home; if they want to put other walls up all they have to do is look at the blueprint and start hammering on the wall, make an outlet there and put electric fixtures through" (4333-4). On cross-examination by counsel for Massachusetts, witness identified Mass. Ex. No. 63, a letter from witness to Green, dated June 5, 1921, regarding instructions given the trucks to be at 5 West Ninetieth Street, and testified that he supervised the removal of the furniture and took everything from the old house that he thought was suitable for the Massachusetts place (4337-8). He also identified his receipt for the final payment of the contract price amounting to $154,500 and stated that he had an unsettled claim for $18,000 for extras and expenses incurred while waiting for the house to be finished (4339). The same was given in evidence as Mass. Ex. No. 64.

Photographs of Round Hills, twenty-three in number, were identified by the witness and given in evidence as Mass. Exs. Nos. 65-A to V (4352).

On cross-examination by counsel for Mrs. Wilks, witness testified that he had been an interior decorator for many years; that the Round Hills house was furnished by him under the direction of Green as a gentleman's home and was not in any sense an old ladies' home (4354).

Ralph H. Howes, of New York City, testified that he was the contractor who built the Round Hills house and was President of the R. H. Howes Construction Company, the Corporation that had the contract; that his office was in New York City; that they had figured on a number of buildings for Alfred Bossom, the architect, among others, Colonel Green's house; they were the successful bidders and were awarded the contract; the house was built during 1919 and 1920 (4356-7). Witness identified the plans and specifications, N. Y. Exs. Nos. 91, 91-A and 91-B, and same were given in evidence (4358-60).

Further testifying, the witness said that the building is what is known as a fireproof building, it has steel frame, reinforced concrete floors, fireproof partitions, has an exterior of cut granite backed up by brick walls; a solid roof laid on a concrete underbedding, wood-finished floors, hung ceilings on the first and second floors and basement, wains-

coating in some of the principal rooms, and a large number of bathrooms with tile walls and floors (4360); the house was built in accordance with plans and at every point on the plans where there is a circle with a period in it, it indicates a concealed electric outlet, the purpose of which is to put them back of the hung ceiling and plaster so that at a future date they may be used and save the expense of running wires and conduits to that particular place; there were many concealed outlets on each of the three floors, as well as concealed ceiling outlets on the second floor plan, and a number of concealed base outlets on each of the floors, the latter to enable a connection to be made at that point in the room without damage or additional expense; that witness had never run across the same situation before or since and considered the number of outlets that were not concealed adequate for the purpose of using the building as a residence (4362-3); that he asked the architect why in a building of this sort so much money was spent in putting in these outlets which were apparently no use to the present occupant and were far beyond what was usual in a first-class residence, and was told that the reason they were put there was because it was the intention of the owner to use the building as a public institution after he lived in it a while (4364); that Green often referred to the building as a Summer residence or cottage (4366).

On cross-examination by counsel for Texas, the witness testified that the partitions between the rooms are of gypsum block, plastered on both sides—"the same sort of construction you would have in this hotel or any other fireproof building" (4367-8); it is permanently constructed at the time but all sorts of changes can be made in it without affecting the structural portions of the building; it is something like an office building or apartment, has steel frame carrying the walls and floors, but you do not look for structural strength in the partition; it is an unusual type for a gentleman's residence (4368); it is more like a public building than a residence; it could be adapted to ready use as a public building; that according to the blueprints, there are about twice as many blind outlets, both ceiling and otherwise, as open ones (4369).

On cross-examination by counsel for Florida, witness testified that when awarded the contract, the plans and specifications were given to him by Mr. Bossom, the architect; that it was unnecessary to talk to Green because the

uniform architect's contract specifically states that the contractor receives his information from the architect and the architect's interpretation of the plans and specifications (4370); that he checked the outlets up with the architect, who said, "These outlets are in because Colonel Green wanted to have it made out that way and we cannot take them out;" witness asked "Why," and the architect replied, "Because this building is designed so as it may be used for another purpose—as an institution building," so we put them in (4372); that the construction of partitions with gypsum block lends itself readily to readjusting the room or putting in more rooms throughout the building without interfering with the uprights which carry the weight (4373).

On cross-examination by counsel for Mrs. Wilks, witness testified that he did not get the feeling at any time that it was being built as a home; there was no personal atmosphere connected with it in any way. Witness admitted that N. Y. Exs. Nos. 91, 91-A and 91-B all contained the legend, "Residence, Colonel E. H. R. Green, South Dartmouth, Massachusetts," and from the point of view of the builder it was completed as a private residence (4376). On redirect examination by counsel for New York, witness testified that the house was completed in accordance with the plans and specifications, that Green had an unusual understanding of electricity; that he has seldom known a man who was not a professional engineer who was so well acquainted not only with the theoretical but the practical side of electricity as Green (4377).

On cross-examination by counsel for Massachusetts, witness testified that he was also familiar with many details of construction but did not seem to have the same understanding of other branches as of electricity; that over $150,000 was spent in the exterior stone work and he did not seem to realize the processes that had to be gone through with to cut and fit the stone and set it in the building (4377).

N. Y. Ex. No. 92, an itemized list of the contents of the Sherry-Netherland apartment was given in evidence (4380). Also N. Y. Ex. No. 93, affidavit of the Secretary of the Texas and New Orleans Railroad, May 3, 1937, stating that Green received no salary from the Texas Midland Railroad (4381-2).

Also N. Y. Ex. No. 94, affidavit of the Secretary of the same Company, dated April 30, 1937, as Custodian of the records of the Texas Midland Railroad Company, that from 1893 to 1928, all of the outstanding stock of said Railroad, excepting one share standing in the name of E. H. R. Green and six Directors, stood in the name of Hetty Green or the Westminster Company (4386-8).

RALPH H. HOWES being recalled, further testified on direct examination by counsel for New York that N. Y. Ex. No. 90, the plans of the Round Hills house, showed that the building was about 275 to 300 feet long and 50 to 60 feet in depth; that they excavated the whole area, built the foundation walls, put in the concrete floors, set the columns up and left in this large area a space which was divided into a series of rooms, one of which was the organ chamber; that there is also an elevator well, elevator machinery room, organ, motor chamber room, two boiler rooms, coal and wood storage rooms, many fireplaces, transformer rooms, valet's dressing rooms, vegetable cellar, wine cellar, and two storage rooms, all indicated on the plans; that the side walls were plastered with waterproof cement and the concrete ceiling floor laid above it; that the cellar extended under the entire house and it would have been possible to arrange sleeping quarters in the basement without trouble; there are many windows shown on areas that would give you light and on one side the building fell away somewhat; you could put sleeping rooms in the basement or cellar and could rearrange and put the kitchen and dining room in the cellar, also treatment rooms of various sorts might be put there; that the unfinished space could be rearranged and used for many purposes and some of the present rooms could be used for other purposes; that the third floor is divided into eighteen or nineteen rooms known as servants' quarters and storage space; that the cedar or storage room is 15' x 22' and there is a bedroom 23' x 22' on that floor; in the wing portion, there is a large unfinished area not divided by partitions into rooms; there are many outside windows; there are three large bathrooms, one maid's bath that has three lavatories and a man's bath that also has three lavatories, in both cases they have in addition the

tubs and the toilets; that there are many soil and waste lines coming up, vent lines coming up from the floors below that could be used for other plumbing connections, if so desired; that the plumbing work was carefully laid out and the best of material used; they used brass pipe for the hot and cold water line at a time when it was not necessary to do so even in the best of houses; that N. Y. Ex. No. 91-B is the basement electric plan which shows many extra concealed outlets in the basement—several times more concealed outlets than were intended for active immediate use (4389-91).

Thereupon counsel for New York gave in evidence the following Exhibits:

N. Y. Ex. No. 95, letter from Green, dated January 24, 1913, to Dr. E. P. Wilmot, Austin, Texas, explaining the pressure of business in New York prevented him from attending the Governor's Inaugural Ceremonies (4393).

N. Y. Ex. No. 96, Birth Certificate of Green from the General Register Office, Somerset House, London, Marylebone Registration District, reading:

"1868 Birth in the Sub-District of Cavendish Square, in the County of Middlesex.

No. 52

When and Where Born: Twenty-second August 1868, at The Langham Hotel.

Name, if any: Edward Howland Robinson

Sex: Boy.

Name and Surname of Father: Edward Henry Green.

Name and Surname of Mother: Hetty Howland Green, formerly Robinson.

Rank or Profession of Father: Merchant.

Signature, Description and Residence of Informant: Edward H. Green, father, Langham Hotel, Portland Place, Marylebone.

When Registered: Twenty-sixth August 1868.

Signature of Registrar: Wm. Tookey, Registrar."

(4396-7.)

N. Y. Ex. No. 97, letter dated November 20, 1918, signed by Green as President of the Texas Midland Railroad Company, to C. R. Gray, Director, Division of Operation, United States Railroad Administration, Washington, D. C., listing

the Directors for whom annual transportation was requested, among others, "E. H. R. Green, New York City," also officers of the Company, among others, "E. H. R. Green, President, New York to Terrell, Texas,—New York address: 111 Broadway; Terrell address, temporarily, American National Bank" (4401).

N. Y. Ex. No. 98, copy of agreement dated October 18, 1923, between Green and Sarah A. Nolan, for the sale of certain land and buildings at Roxbury, Massachusetts (4402-5).

N. Y. Ex. No. 99, agreement made August 10, 1925, between Green, "of New York, N. Y.," and the Fogal Boat Yard of Miami, Florida, for a Diesel Tug to be delivered at Miami, Florida (4410).

N. Y. Ex. No. 100, contract made August 6, 1925, between the Consolidated Shipbuilding Corporation of New York City and Colonel Green, of 115 Broadway, New York City, for a Speedway Cruiser (4415).

N. Y. Ex. No. 1[illegible], bill of Dr. Unger, dated December 1, 1921, for blood transfusion (4417).

Thomas W. Chrystie, recalled, testified that Mrs. Green lived at Round Hills until December 8, 1936, and then moved away; that after his appointment as Massachusetts Administrator he made an examination of the old Howland house at Round Hills in which Green's ancestors were reputed to have lived; it was not in good repair and he had the roof reshingled and other improvements made; the wall paper and plaster were in poor condition (4406-8).

John W. Schlabitz, of New Rochelle, New York, testified that he was an architect formerly connected with Alfred C. Bossom in charge of various jobs from 1916 to 1921, getting up the working drawings and specifications, among others, the house at South Dartmouth for Colonel Green, and supervised most of the detail work in connection with that building, and met Green (4423-5); that the architect told him it was to be designed as an institution at a later date (4425). Witness identified plans of the Round Hills house, N. Y. Ex. No. 90 (4425), and testified that under the architect's

direction he started to design the house at the second floor; that all bedrooms were to be approximately twenty feet square, with a hall in the center, so that in the future the partitions could be taken out in the center; forming wards on the second floor: that is the way the plans were laid out (4426); that the building was constructed with columns in the center and any wall taken out would not affect the structure; they were terra cotta and the blocks could be knocked out with a sledge hammer, forming large rooms at either end (4427); that the walls in between these rooms were built in such a way that the various small rooms could be converted into pantries, scullcries, private baths, etc., for future wards—smaller wards in the *middle with* private rooms on the side; that this would make wards 20' x 47' on either end (4427); the bathrooms were located in between the bedrooms but were so designed that they could be converted into private baths, scullcries or pantries by knocking out the partitions; that some concealed plumbing lines were capped up in the walls so as to introduce pantry sinks, scullery sinks or anything pertaining to an institution or hospital: that they began with the design of the second floor and this made the building so long that it made tremendous rooms on the first floor, a living room 50 feet long, a tremendous dining room, a number of dens, Chinese room, etc. (4428); the third floor, as witness remembers, was to be left open for future bedrooms; that the architect told him that the building had to be a granite building made to look like a big institution; according to the original design, there was to be a wainscoating in the various rooms 4 or 5 feet above the floor, the elevator was to be big enough to wheel a cot or wheelchair into it (4430).

Anne Owens, of New York City, testified that she was the Executive Housekeeper of the Sherry-Netherland Hotel and had been Assistant Housekeeper at the old Waldorf-Astoria and knew Green when he lived there (4431-2); that Green selected the pieces of furniture he wanted moved to the Sherry-Netherland for his apartment—an old brass bed, chest of drawers, night table and some chairs for his office or living room and some draperies to be taken to the Sherry-Netherland, where he had the entire twenty-fourth floor (4434-5). Witness identified N. Y. Ex. No. 162 as an architectural drawing of the Sherry-Netherland apartment

(4436-7) and stated that in Green's suite was the dining room, also used as the secretary's office, a big living room and terrace, an entrance hall, bedrooms, servants' quarters, pantry and two elevators; that Green's living room overlooked Central Park and there was a large terrace which he used sometimes for sunning; that they brought up the furniture and draperies used by Green in the Waldorf; that Mrs. Green used the Sherry-Netherland furniture and brought a few personal pictures, etc.; they also brought up some framed money which hung on the wall, some maps and original Government grants which were hung in his study (4439-41); they also brought up a music cabinet and a large radio for Mrs. Green; that Green was not very anxious to move, although it was necessary but he thought that going there with the people that had been at the old Waldorf would make him feel more at home and that is the reason he wanted to take some of the atmosphere of the old Waldorf with him to the Sherry-Netherland (4441-2).

On cross-examination by counsel for Massachusetts, witness testified that the furniture that Green selected to be taken from the Waldorf to the Sherry-Netherland was all Waldorf furniture which they purchased for him; this did not include his desk and chairs; that the twenty-fourth floor was the floor of the tower and not the floor of the building (4446-48 and 4450).

Counsel for New York then offered in evidence the following Exhibits:

N. Y. Ex. No. 103, letter from Green, dated March 15, 1929, to the Manager of the Hotel Plaza, New York City, in which he stated:

"I have been advised that my old home, the Waldorf-Astoria has been sold and that we are expected to vacate by May 1st, at which time all the furnishings in the hotel are to go on sale; * * *

I am now looking for a suite of rooms consisting of three bedrooms, with baths, a parlor and a large room in which I can place some fireproof safes containing my stamp collection, etc."

and requesting a floor plan to be addressed to him at 46 Star Island, Miami Beach, Florida (4452).

N. Y. Exs. Nos. 104 to 108, copies of letters written by Green in 1929 relating to his removal from the Waldorf-Astoria (4454-60).

N. Y. Exs. Nos. 109 to 111, correspondence showing Green's removal to the Sherry-Netherland (4463). In Ex. No. 110, dated October 15, 1929, addressed to Henry C. Coke, Dallas, Texas, he said, "My New York address now is Sherry-Netherland Hotel, 5th Avenue and 59th Street" (4465), and in Ex. No. 111, dated June 19, 1930, addressed to said Coke, he said:

"We have been having exceptionally hot weather here this summer and I am just getting ready to go to my country place at South Dartmouth, where I hope it is going to be cooler than here in New York. It is just as hot in New York this summer, if not hotter, than in Texas" (4468).

N. Y. Exs. Nos. 112, 113, 114, 115 and 116, letters relating to the movements of Green (4469-77).

N. Y. Ex. No. 118, letter from Green, dated December 18, 1925, to B. H. Anthony, of The New Bedford Standard, New Bedford, Massachusetts, introducing Tom C. Gooch, Vice President and Editor of the Dallas Times-Herald, in which he referred to Dallas as "my old home town" (4486).

N. Y. Ex. No. 119, photostat copy of letter dated October 22, 1920, on letterhead of Crapo, Clifford & Prescott, New Bedford, Massachusetts, addressed to Green and signed by Oliver Prescott (4493). (In this letter he suggests a contribution to the Social Agencies of New Bedford and South Dartmouth. Mass. Ex. No. 59-A shows a contribution on October 23, 1920, to the Community Welfare Fund of New Bedford for $1500 (R. 4504).

N. Y. Ex. No. 120, a letter dated July 6, 1923, and Ex. No. 121, dated October 29, 1923, in which Green refers to his "Summer residence" at Round Hills (4496-4502 and 4515).

N. Y. Ex. No. 122, letter from Green's secretary, dated January 29, 1931, which refers to Round Hills as his "Summer home." (4503).

N. Y. Exs. Nos. 123 and 124, correspondence of June, 1926, with the New Bedford Broadcasting Company (4506), relating to the loan of Green's portable radio set for use in the celebration at New Bedford on July 5th, in which Green said:

"It will be impossible to accommodate you, as we cannot now get the equipment ready by the date desired (July

5th). Our electrical men will not be at Round Hills before July 1st" (4508).

N. Y. Ex. No. 125, photostat of a letter dated South Dartmouth, Massachusetts, November 17, 1924, to Adolph Skibsted, Round Hills House, Green's chef, in which it is stated, "The season here is closed for the winter, etc." (4517); N. Y. Ex. No. 126, a circular letter of recommendation for Skibsted from Green at 111 Broadway, New York City, dated November 17, 1924, in which he said, "He again entered my employ in July, 1921, as Chef in Round Hills House, my summer residence, where he has been until this date" (4518-19).

N. Y. Ex. No. 127, a photostat copy of letter dated November 17, 1934, from Green's secretary to the Sales Manager of the Schick Dry Shaver, Inc., Stamford, Connecticut, in which he said, "We are here at Colonel Green's summer home, but will be leaving shortly for Miami Beach, where we will spend the winter" (4521).

N. Y. Ex. No. 128, photostat copy of letter from Green, Falls Hotel, Marlin, Texas, June 13, 1935, to Dr. C. Frederic Roche, Glen Springs, Watkins Glen, New York, in which he said, "We have been here four weeks and two days and are leaving next Sunday, the 16th, at 2:32 A. M. for my summer home at South Dartmouth, Massachusetts" (4525-6).

N. Y. Ex. No. 129, photostat copy of letter dated Waldorf-Astoria, New York City, December 16, 1924, to Mrs. Alfred C. Bossom, stating, "Upon my return to the city from Round Hills I find the gift you so kindly sent me, etc." (4527).

N. Y. Exs. Nos. 130 to 137, relating to miscellaneous matters. In Ex. No. 131, letter dated April 2, 1927, to his sister, Mrs. Wilks, he said:

"I expect to leave Miami Beach on April 15th for Marlin, Texas, and will spend a month there taking the baths. From a letter I received from Dr. Buie today, I expect to return to New York the latter part of May in such condition that you will not know your brother Ned as you last saw at the Waldorf. I believe my visit to Florida has improved my health" (4538).

In Ex. No. 132, photostat copy of letter dated October 30, 1927, from Mrs. Wilks to Green, she says, "I hope you will

not stay at Round Hills so late that you get stiff so you can not enjoy yourself when you come to New York" (4539-40). Ex. No. 134, photostat copy of a letter dated February 25, 1928, from Green to his sister enclosing a copy of the order of the Interstate Commerce Commission in regard to the sale of the Texas Midland Railroad (4546). In Ex. No. 135, photostat copy of letter dated Marlin, Texas, April 2, 1922, addressed to E. R. Duff, Round Hills House, South Dartmouth, Massachusetts, regarding the installation of wireless telephones there, Green says:

"We will only need the service from June until December where we use the switchboard, like all the rest of the people in that locality who have telephones installed for the summer period" (4548-50).

Ex. No. 136, photostat copy of letter from Green, dated Marlin, Texas, April 17, 1922, to said Duff, his steward at Round Hills, returning a letter from the New England Telephone Company (4552-4). Ex. No. 137, photostat copy of letter from Duff to Green, Waldorf-Astoria Hotel, New York City, dated Round Hills House, South Dartmouth, Massachusetts, May 8, 1923, in which he says:

"I trust that you arrived back home feeling in the very best of health * * *.

Everything seems to be going along very nicely here, and we are getting everything in readiness for the coming summer * * *.

I suppose you will pay us a visit as soon as you get rested up from your trip" (4557).

N. Y. Ex. No. 138, photostat copy of letter from Green to the A. H. Grebe & Co., Inc., dated August 15, 1922, relating to the purchase of radio apparatus for Round Hills, in which he says:

"If you have a set that will accomplish something unusual or that is not possible with other sets, we would also like to add that to our collection, as it is our desire to make our display as attractive as possible. Inasmuch as the season here lasts for the next two months only, we will appreciate it very much if you will forward to us at the earliest moment possible whatever set or sets you think it advisable for us to have" (4559-61).

N. Y. Ex. No. 139, photostat copy of letter from Green to Crazy Well Company, Mineral Wells, Texas, September 27, 1916, cancelling an order for water to be sent to his residence, 5 West Ninetieth Street, New York City (4562).

N. Y. Ex. No. 140, photostat of letter from Green to the Crazy Well Company, Mineral Wells, Texas, dated March 5, 1917, referring to the preceding letter (4564-5).

N. Y. Ex. No. 141, photostat of Western Union telegram from Miami Beach, Florida, February 5, 1930, to Dr. N. D. Buie, at New York City, reading:

"I have wired the two gentlemen you have referred to as follows 'For many years I have been going to Marlin, Texas, to receive the benefit of the wonderful water they have I want to personally urge the Government to designate Marlin as a Veteran Hospital City so that others may receive the same benefits' If there is anything more I can do I shall be glad to do it" (4567-8).

N. Y. Exs. Nos. 142, 143 and 144, photostats of Western Union telegrams to Green March 28, 1929, from Armstrong Perry regarding a vacancy in the Federal Radio Commission. In Ex. No. 144, March 28, 1929, Green telegraphed:

"As I spend only summer months in New England and being a rabid Republican, having served eight years as Republican National Committeeman from Texas, I would not be available for appointment on Federal Radio Commission, etc." (4571-4574).

N. Y. Ex. No. 145, photostat of letter to Green, November 7, 1911, from W. P. Allen, Terrell, Texas, in which he said:

"There is never a day that passes but what we all think of you and the good that you did to this country while you were a resident here" (4578-9).

N. Y. Ex. No. 146, photostat of letter from Green to said Allen November 13, 1918, in which he said:

"If you are not having any socialist meetings at your front door in which the policemen are tearing down the red flags, I may have to come down and live with you after a while" (4579-80).

N. Y. Ex. No. 147, photostat copy of letter from said Allen to Green November 14, 1918, in which he said:

"Hope you found Mrs. Green in good health when you returned home and I know you are both as much elated at the ending of the war as we are here" (4583-4).

N. Y. Ex. No. 148, photostat of letter from said Allen to Green, New York City, June 4, 1919, in which he said:

"I trust that you had a pleasant trip home and as I notice money is eleven percent in New York yesterday I presume you are doing well" (4585-6).

N. Y. Ex. No. 149, photostat of letter from said Allen to Green, New York City, November 4, 1921, in which he says:

"I was on my way to Dallas to see you yesterday when I learned that you had decided to go back.

I certainly hope you will not be very sick, and that you will be able to finish your visit before Christmas.

* * * * * * *

I am enclosing the poll tax receipts which I trust you will find in order" (4587-8).

N. Y. Ex. No. 150, photostat of letter to said Allen signed by Mabel H. Green, dated January 19, 1925, enclosing her poll tax to be charged to Colonel Green and stating:

"Colonel Green is well and enjoying Florida weather. It is very warm here. I had rather be in New York. I do not like hot weather, etc." (4591-2).

(See statements of counsel regarding admission of declarations made by Mrs. Green as bearing upon the question of Colonel Green's domicile) (4589-91).

N. Y. Ex. No. 151, photostat of letter from Green, Sherry-Netherland Hotel, June 25, 1929, to said Allen, acknowledging receipt of an electric razor, etc. (4593-4).

N. Y. Ex. No. 152, photostat of letter from Green to said Allen, dated March 6, 1931, in which he says:

"As you know, I am always glad to see you, but at the present time I am trying to make up my mind just where to go. I have found that this year Florida is not the proper place for a fellow in my condition to remain. We have had nothing but cold spells and bad weather ever since we arrived. However, judging from the looks of the weather

bureau, it has been about the same all over the country. I am trying to see what part of the country is going to make a break for better weather" (4596).

N. Y. Ex. No. 153, photostat of letter from said Allen, Terrell, Texas, to Green, dated October 6, 1931, acknowledging the receipt of a box of cranberries, in which he says:

"I have not seen you for more than two years, and as it looks like you will not come to Texas any more, I would like to have one more long chat with you before my time comes" (4598-4600).

Photostats of certain correspondence between Green and his mother in 1908 and 1909, N. Y. Exs. Nos. 154 to 156 (4601, et seq.) and N. Y. Ex. No. 157, being a photostat copy of a postal card postmarked San Francisco, California, dated December 10, 1915, from Green to his mother, 7 West Ninetieth Street, New York, reading, "Meeting over Will leave Sunday for home Everything all right so far" (4613).

N. Y. Ex. No. 158, photostat of Western Union telegram from Miami Beach, May 4, 1934, Green to Mrs. Charles W. Pierson, reading: "It is with profound regret that I have just learned of the passing of Mr. Pierson, my business associate and close personal friend for many years" (4614-15).

N. Y. Ex. No. 159, photostat of letter from Green to Charles W. Pierson, dated December 28, 1931, regarding land grants received in towns along the Texas Midland Railroad, in which he says: "Those lands are unsaleable today" (4616-17).

N. Y. Exs. Nos. 160 to 170, miscellaneous photostats of correspondence with Green (4620). Ex. No. 160, photostat of letter from W. P. Allen, dated November 11, 1924, asking whether he should pay poll taxes for himself and Mrs. Green (4620-21), and further stating:

"While you know we would all hate to see you move your official residence from the State of Texas where it has been so long, at the same time we have a new Inheritance Tax law that would hit your Estate pretty hard, (I think it runs as high as 25%). We have so far gotten by without an income Tax but the last legislature tried to pass it.

I don't think they will pass an income law under the present administration but you can never tell. As you spend quite a lot of time in Florida, I thought you might

want this information, so please write me what to do about paying the Poll Taxes for this year" (4621).

In Ex. No. 161, photostat of letter from Green, South Dartmouth, Massachusetts, November 15, 1924, to said Allen, in which he said:

"When is the latest day before the next election a person can pay his poll tax? As suggested in your letter of November 11th, I am going to look into the Florida matter. Please let me know about this" (4623).

In Ex. No. 162, photostat of letter to Green November 18, 1924, from Allen, in which he said:

"I am in receipt of your letter of Nov. 15th, and replying to same will say that we have until Jan. 31st, 1925 in which we can pay poll taxes before they become delinquent. I will wait your further instructions in this matter, until you have looked more fully into the Florida matter.

I think I sent you a copy of the latest Texas law when it was passed, however, for fear that I didn't I am ordering another today, which I will forward to you.

I am very sorry indeed to learn that your joints are stiffening up again. I am afraid that you are staying in the cold climate too long, and ought to have been down here in Texas or Florida before this time" (4625-26).

In Ex. No. 163, photostat of letter from said Allen to Green January 17, 1931, he says:

"For many years past you have held your residence in Terrell, Texas, paid your income Taxes in Texas, and I have been paying your poll Taxes for you.

The State only requires a poll tax payment for those 60 years of age or younger, so now you are not assessed a poll tax, although they would accept it if I were to tender it.

The Legislature is now in session, and judging from Press reports I think that they are going to pass an income Tax law for Texas this year, and as this will cost you a lot of money, I was wondering if you still wanted to maintain your residence here.

With the present laws in Florida as I understand them relative to the Income Tax, I thought possibly that you might want to change as I sincerely believe that it will save

you a lot of money while you live and several millions on Inheritance Tax.

It may be presumptive on my part to write you this, but with this Texas law staring us in the face I thought it my duty to tell you. So if you want me to tender your poll Tax please write me by return mail, as Jan. 31st, is the last date to pay them" (4628-29).

In No. 164, photostat of letter from Green, Star Island, Miami Beach, Florida, to Charles W. Pierson, New York City, January 20, 1931, reading:

"I enclose herewith a letter from Mr. W. P. Allen of Terrell, Texas, which is self explanatory.

The writer of the letter is a very close friend of mine and is in with the administration in Texas. I am a director of his bank and have been his friend through a great many hard times, and whatever he has said has always been pretty near right. I am telling you this for your guidance in reading the letter. Please tell Mr. Potter to wire Mr. Allen if you think I had better continue to pay my poll tax in Texas" (4631).

Ex. No. 165, photostat of letter from said Pierson to Green January 22, 1931, reading (4633-35):

"I have your letter of January 20 enclosing letter of January 17 from Mr. W. P. Allen of Terrell, Texas.

As Texas only requires a poll tax payment for those sixty years of age or younger, it seems unnecessary to pay a poll tax for the current year.

The question of a possible change of legal residence is one I should like to consider a little more before expressing an opinion. Of course, there is such a thing as jumping out of the frying pan into the fire. If you have not answered your friend Mr. Allen's letter I suggest that when you do you inquire whether he can give you any idea as to when the new income tax law is likely to go into effect. Have you heard from any of your acquaintances who have changed their legal residence to Florida what their experiences under the local tax laws have been or what new taxing legislation is contemplated? I don't suppose any attempt is made at present to tax residents on their holdings of State and municipal bonds of other States but there is nothing in the law to prevent a State from doing this if it sees fit. In

other words, while the United States Government canno tax New York State bonds the State of Florida could if i wanted to.

I will be considering the matter carefully from various angles and shall expect to write you again about it before long" (4634-35).

Ex. No. 166, photostat of letter from said Pierson to Green, South Dartmouth, Massachusetts, November 9, 1931, reading (4636-38):

"Mr. Potter tells me that your tax bill from Florida includes an item of poll tax and asks whether this should be paid.

I had some correspondence with you in January and February last about changing your legal residence from Texas to Florida. My impression is that you decided to do nothing about it for the present as the Texas Legislature adjourned without enacting an income tax law. However, I should like to be sure about this before advising about the Florida poll tax. If you have decided to change your legal residence at this time I think the poll tax should be paid; if not, I think it should not be paid and that a record should be made that it is not paid because you are not a legal resident of the State.

Won't you drop me a line telling me what, if anything, was done about a change of legal residence when the matter was up last winter and spring and what your present feeling is on the subject. I shall be glad to hear from you in the course of the next few days as Mr. Potter tells me there is a four per cent discount if the Florida State and County property taxes are paid during November" (4637-8).

Ex. No. 167, photostat of letter from Green, South Dartmouth, Massachusetts, to said Pierson, November 10, 1931, reading (4640-42):

"In answer to your letter of November 9th, in regard to the Florida poll tax, will say that all I remember is that I sent on to you a letter from Mr. W. P. Allen, saying they were going to get after us about an income and inheritance tax in Texas, but, as I understand it, the matter died of a natural death in the Legislature and, therefore, nothing was done.

Florida today is in about the same shape as the United States is in selling their Treasury Notes—they are hunting around in every way possible to increase taxes to meet the obligations of all the little towns that have not, as well as the ones that have, defaulted on their interest. I think the great trouble with Florida is going to be the personal tax. No poll taxes were paid last year in Florida. The only place a poll tax was paid last year was in Texas. I have no sentiment as to where my legal residence shall be. Every State I know of is trying to increase its taxes in some way. I don't see any benefit at the present time in making a move, unless you do. It looks to me as though we were going to get an increased tax in any State, or the United States" (4641-42).

Ex. No. 168, photostat of letter from Green to said Pierson February 1, 1933, reading (4643-45):

"I quote below an extract from a letter I have just received from Mr. W. P. Allen, President of the American National Bank of Terrell, Texas, dated January 28th, 1933:

'For the last few years I have been keeping you informed as to the taxation laws in Texas and I have thought for some time it would be best for you to move your official residence to the State of Florida and file your Federal Income Tax Return there.

The Present Legislature now in session is going to pass a very drastic Income Tax Law and if you file your Federal Income Tax Return in Texas and claim this as your residence, you will have to file State Income Tax Return here also and it may run into large figures.

I believe, much as we appreciate having you as a citizen of this State, that in order to save this large amount of money each year, to say nothing of Inheritance Tax, you should change your residence to the State of Florida, where they have no Income or Inheritance Tax. I am only writing this so that you may be informed, as I believe it my duty to do so'" (4644-45).

Ex. No. 169, photostat of letter from Green to W. P. Allen, Terrell, Texas, February 14, 1933, reading (4646):

"In connection with your letter regarding a proposed change in my legal residence from Texas to Florida, I enclose herewith copy of a letter I have just received from Mr. Charles W. Pierson, my attorney in New York.

If, as suggested by Mr. Pierson, you will keep me
by telegraph of the progress of the proposed incon
legislation in Texas I shall be very much obliged to
(4646).

Ex. No. 170, photostat of letter from Pierson to
Miami Beach, Florida, February 9, 1933, reading (465

"I have yours of February 1, quoting from a lett
ceived from Mr. W. P. Allen, in which he says that the
legislature now in session is going to pass a very d
income tax law and advises that you change your resi
from Texas to Florida.

Unless you contemplate going back to Texas to live
time (and I suppose you do not) it seems hardly worth
to keep the Texas domicile if that is going to involve ma
returns and paying an income tax to Texas on your e
income derived from sources without the State as we
within it. Rather than do this I should be inclined to giv
the Texas domicile and change your legal residenc
Florida. I say this although, as you will recall
previous letters and conversations on the subject, I am
particularly enthusiastic about Florida as a legal resid
on account of the danger of oppressive personal taxes.
Florida statute enacted in 1931 imposes a tax of two
on the dollar of taxable value of stocks and bonds a
presume the rate may be raised some day. Just how burd
some such a tax would be would depend largely on how
law is administered and what valuations are adopted.
statut-s provides that:

Intangible personal property shall be assessed in
county where the taxpayer resides or has his usual domic

and that:

The taxable value of all intangible personal prope
which is assessed on said tax roll shall be on the same ba
of valuation as is used for the assessment for taxation
real or personal property.

Perhaps some of your friends who have taken up leg
residence in Florida can tell you how these provisions ha
been applied as a practical matter in their own cases.

As I wrote you when the question was up two years ag
in law a change of legal residence involves two element
—first, actual presence in the new residence and, secon
intent to make the change. As you are actually living

Florida now, you are in a position to make the change of legal residence by simply making up your mind to do it—forming the intent. The important thing would be to be able to prove the intent and when it was formed.

My suggestion is that you arrange with Mr. Allen or some other reliable friend in Texas to keep you posted by telegraph as to the progress of the proposed tax legislation and that if and when it becomes certain that an income tax law will be enacted, you—

Write a letter to your office here stating that you have changed your legal residence to Florida and directing that all papers be drawn accordingly and that your Federal income tax return for 1932 (if not already filed) be filed in the Florida District;

Write a letter to the Texas Midland and any other Texas corporation in which you are an officer or director, stating that you have changed your legal residence to Florida and requesting that their records and future publications be amended accordingly;

Register as a voter in Florida at the earliest opportunity;

See that you are listed as a resident of Florida in your automobile license and any other papers you may have occasion to sign" (4650-53).

Ex. No. 171, photostat of letter from Green to Social Register Association, New York City, December 29, 1927, regarding a subscription, and Ex. No. 172, photostat of letter to said Association May 21, 1929, signed by Mrs. Green, in which she states (4655-58):

"The names of Col. Edward Howland R. Green and myself should appear as in former issues, with the addition of our winter home, which is 46 Star Island, Miami Beach, Florida" (4658).

Photostat copies of pages from the Social Register, New York City, for 1911 to 1934 and the Summer Social Register, New York, 1921 to 1927 and 1929, as N. Y. Exs. Nos. 173 to 202 (4659), indicating Green's residence in Winter and Summer in the years mentioned.

N. Y. Exs. Nos. 206 to 209, certain photographs of the Green burial plot and monument in the cemetery in Bellows Falls, Vermont (4767).

N. Y. Ex. No. 210, photograph of the Round Hills House, and Exs. Nos. 211 to 213 relating to the broadcasting station at Round Hills (4773-81).

N. Y. Exs. Nos. 214 to 217, relating to miscellaneous matters of minor importance (4783-90).

William B. Hogan, of New York, testified that he was Assessor for the Department of Taxes and Assessments, New York City, and had been for 22 years; in former years he had the block from Central Park West, in Ninetieth Street, in 1917 or 1918, that Ninetieth Street was then exclusively a private house block running from Central Park west to Columbus Avenue; the larger apartments were not there; there was one garage in the block about 100 or 150 feet west of Central Park West on the south side of the street; according to his recollection, there was nothing to indicate boarding houses; it was a high class residential neighborhood (4489).

William C. Phillips, of New Bedford, Massachusetts, testified that he was Assistant Cashier of the First National Bank of New Bedford and identified N. Y. Exs. Nos. 221 and 222, signature cards of Green, dated August 2, 1918 and August 2, 1911, showing "Permanent Address, 111 Broadway, N. Y." from the records of the Bank formerly the Mechanics Bank of New Bedford (4795-4800).

William H. Tripp, of New Bedford, Massachusetts, Curator of the old Dartmouth Historical Society and Whaling Museum of the City of New Bedford, testified that he became acquainted with Green in 1924 and knew him until the time of his death; in January, 1933, he called upon him at the Sherry-Netherland, New York City, as Secretary of the New Bedford Port Society, and asked him to become the first subscriber to a tablet to Captain George Fred Tilton, formerly in his employ in charge of the "Charles W. Morgan;" he found him in his office, sitting at his desk, wrapped up in a blanket; around the sides of the room were green filing cases and on the table postage stamps, coins and magnifying glasses (4801-04).

On cross-examination by counsel for Texas, the witness said he had several conversations with Green about his residence and on one occasion he told him his address was Terrell, Texas; spoke of it as being the center of two railroads and told about the moving picture people borrowing two locomotives to make a moving picture of a crash between two locomotives (4805); Green asked him to act as Assistant Treasurer for Whaling Enshrined which he did until the funds were exhausted; during this time it was customary for the Directors of Whaling Enshrined to hold their meetings on the deck of the "Charles W. Morgan" on the birthday anniversary of the ship, July 21st, and as long as Green was able to do so he attended; after he failed in health and it was not easy for him to get around, they were held on the dock alongside the ship; during this period he was never what might be called a well man; he did not engage in any of the social life of New Bedford (4805-6).

At the request of counsel for New York, it was conceded that Hjordis Ullestad was employed by Green at one time as nurse (4806).

Clifton W. Bartlett, of New Bedford, Massachusetts, testified that he was acquainted with Green and called on him in a social way and talked with him on various subjects; on one occasion he said that the people around this District were not very favorably impressed with his mother and she hoped that he would come here and build a monument for her on the Round Hills property; he said that was her wish expressed to him (4807, 4809). On cross-examination by counsel for Massachusetts, the witness testified that his son married one of the protegées of Green—Miss Cammack, and she visited the Colonel, which led to their acquaintance; that witness and his wife took dinner with Colonel and Mrs. Green at South Dartmouth three or four times each season during their stay there and he has met at his table several other prominent residents of New Bedford and young ladies visiting with the Greens (4812-13).

Charles A. Parker, of New Bedford, testified that he had been a newspaper man 38 years and is a Special Feature Writer for several papers and at present is connected with

the Boston Traveler; that he knew Green and interviewed him on various occasions (4818-19); in the month of October, 1925, he interviewed him and wrote an article for the Boston Traveler October 17, 1925; Green was in his electric car on the Round Hills Estate carrying on a conversation with various farmers on the farm and giving some attention to stamps which he had received in an envelope that morning (4820); he had a board or table arranged in the automobile upon which he was working; they were obviously stamps of some value; he remarked that the house some distance away was too large for a dwelling and that he had talked with his sister in regard to it and they felt that they would leave the house as a museum or give it to the City as a playground for the public (4821); that he spoke of the number of people visiting the place, saying he had 20,000 in an unusual day and that 1800 to 2000 visitors were coming there on Sundays and holidays at the time witness was talking with him the month of October (4822).

On cross-examination by counsel for Florida, he said that this article which was in the paper was the result of this conversation with Green and that the quotation there is a quotation from him—

"The house here is too large for a dwelling, said Colonel Green, and our plan is eventually to have it transferred into a public museum or else into a home of some character, but neither I nor my sister has reached a decision as to what form the endowment will take, but we both agree that steps should be taken whereby the estate may be left as a memorial for public use" (4824).

JOHN M. BULLARD, of New Bedford, testified that Sol-e-Mar, an institution for crippled children, lying north of Round Hills, was built in 1923 (4825).

At the hearings at Miami Beach, Florida, April, 1938, counsel for New York gave in evidence, as N. Y. Ex. No. 224, page 98 of the testimony of Colonel Green from the record in the Hetty Green Estate Tax proceeding in the New York Courts, regarding the burial plot at Bellows Falls, Vermont, where his mother, father and grandfather were buried (7694-5); also from his testimony at page 140 of the same record regarding the occupation of premises 7

West Ninetieth Street as an office (7696); also the following exhibits:

N. Y. Ex. No. 225, Inventory of the Estate of Hetty Green, sworn to by Colonel Green, as acting Executor and Trustee under her Will, January 21, 1920, showing an aggregate estate of $67,385,447.59 (7702-5).

N. Y. Ex. No. 226, letter from Green to Claude A. Renshaw, April 30, 1931 (7706), in which he said:

"I am in receipt of your letter of April 29th and thank you very much for the interest you are taking in my Star Island home. When we leave we are always particular about locking up securely everything of value on the place. A caretaker is always left in charge and, in addition, we have a private watchman on duty every night who is deputized as a special officer by Chief Glenn. My permanent address is 111 Broadway, Room 1104, New York City, through which I can be reached immediately at any time."

No. 227, letter from Green, Sherry-Netherland, New York, June 3, 1932, to B. J. Glenn, Chief of Police, Miami Beach, containing the same paragraph as in the letter to Renshaw (7708).

No. 228, letter to Green, New York City, April 18, 1929, from Maurice Van Weintraub, Tampa, Florida, in which he says (7710):

"I hope you arrived feeling O. K. and that by this time you are located in your new home."

No. 229, United States license for the yacht "Friday," of Miami, Florida, issued to Green, 111 Broadway, New York City, by the Comptroller of Customs, Miami, Florida, January 11, 1933 (7211).

No. 230, index of enrollments of the "Colonel," March 3, 1930—Managing Owner, E. H. R. Green, 111 Broadway, New York, Home—New York, etc. (7719).

No. 231, index of license of the "Friday," of Miami, Florida, January 11, 1933,—Managing Owner, Green, 111 Broadway, New York; Morton Fogal, Agent, Miami, Florida (7722).

No. 232, letter from Green to W. A. Philpott, Jr., Dallas, Texas, April 14, 1930, regarding the first sheet of the $5.00

currency of the First National Bank of Dallas, in which he says (7726-28):

"Should I ever have a chance to visit Terrell or Dallas, it will give me pleasure to advise you, so we may have a friendly chat. With kind regards to our friend Max Mehl, from whom I have bought a great many coins and paper money, I remain."

No. 233, summary of Green's interest in Government and Municipal securities as of June 8, 1936, by States, aggregating $14,460,672.45 (7732-34).

No. 234, blueprint of set of plans of the first and second floors of the Star Island house (7737-9).

Hubert D. Bliss, of Hornell, New York, testified that he resided in New Bedford, Massachusetts, from April, 1920 to April, 1925; while there he was a reporter on the Evening Standard (7740-1); that he was assigned to interview Colonel Green in the month of July, 1924, and saw him at the Round Hills mansion; Green told him of the activities there, and their research work, which was the subject of the interview (7743); witness asked him about his political fortunes and Green said, "Oh, you mean my contest for the national committeeman's post in Texas—that was just something drummed up by my old political cronies in Texas—they seemed to get a lot of satisfaction out of it"; that Green said it would be impossible for him to be national committeeman from Texas—"Why, my home is in New York State, my legal home and nothing would be gained from a delegate outside their own State" (7746); that he further talked about the young girls that he and Mrs. Green were educating, about the gift that he and his sister made to Wellesley College and made several references to his mother; that he talked about Texas and referred to the days that he had spent there in which he had done an appreciable amount of railroading; his references were as though that was something that had passed by; that all of his references were general (7747-48).

On cross-examination by counsel for Texas, witness testified that he was assigned to get an interview from Green about the early stages of television and they discussed

things generally; that he did not tell him about his residence in Texas or his interest there (7761), or about his house in Florida, but told him about cruising to Florida—they were houseboating days with him rather than Miami residence days (7763); that witness did not know anything about his purchases on Star Island in 1924 or his visits to Marlin, Texas (7767), nor can he recall that he made anything but a general reference to running for Governor of Texas as a Republican candidate (7770).

On redirect examination by counsel for New York, he said the article published contained the substance of his interview (7781).

HARRY NEYLAND, recalled by counsel for New York, testified that he saw the Round Hills house under construction on several occasions and saw a stone with Green's name or initials on it; it was an Old English type of writing—written rather than printed letter—raised above the background; the stone was carved away from the lettering; it was there on the job with other stones; that in 1924, witness made a design for a bronze tablet which was to go on the rock or some place to hold the memorial when the "Charles W. Morgan" was to be presented to the City of New Bedford; when New Bedford rejected it and Green became interested, witness showed him the sketch which he had changed from the original one, showing Green's name on the tablet; in discussing with him where the ship was to be placed, Green said, "Neyland, if we have the ship down on property which originally belonged to Mother, on the Estate, I do not want to have my name on the tablet, but if we put the ship on property which I myself have purchased, I will permit my name to be used." He further said, quoting Colonel Green as near as it is possible to me, to my understanding and belief of his exact words: "Unbeknown to me, in my absence, workmen carved my name on stone which they intended to place on the Round Hills House; I had that removed, because I did not wish my name to appear upon property owned by my mother or my ancestors" (7784). Green further said, "If that had been my mother's name, or possibly the name of some of my other ancestors, it would be all right; I would have permitted it to remain"; he said that Round Hills was con-

structed for other purposes than a home; he was using it until he had developed Round Hills for a memorial which he had intended to build for his mother and his ancestors; he always showed a great deal of reverence for his mother (7784-5); that in addition to the tablet for his mother, he said that when that was completed he wanted to have another tablet for Isaac Howland, Jr. and Edward Mott Robinson and those were all the names which he wanted to use (7786).

Witness identified Tex. Ex. No. 24 as a picture of the tablet which was under discussion, which he executed and is now on the rock alongside the ship at Round Hills, Massachusetts (7787). A photograph produced by the witness of the rock, showing Colonel Green, was given in evidence as N. Y. Ex. No. 235.

On cross-examination by counsel for Florida, the witness testified that the lettering was obliterated from this stone by Green's direction; witness does not know where the stone was placed but it was intended to be placed in the front of the portico at the entrance to the building (7791); that the lettering was obliterated or changed because Green said he did not mean to use this as a home (7792).

Edward Ardolino, of Metuchen, New Jersey, testified that he was an architectural sculptor and President of the Edward Ardolino, Inc., with offices in New York City, and had done work on the Fields Museum, Cathedral of St. John the Divine, Massachusetts State House, Archives Building in Washington and many other buildings (7798-9); that he did the work on the Round Hills house and had a conversation with Colonel Green in the presence of Mr. Zinn, the representative of the architect, Mr. Bossom, at the main entrance to the building; that Green told him he wanted the work around the main entrance and the decoration of the apex to be bolder than it was because it was intended for an institution and they went to work until they made it bolder as he wished to have it (7800); previous to the execution in stone, they made models first in clay and then in plaster of Paris; Mr. Bossom would inspect the work and from time to time modify it, always stating that that should be heavy, bold work because it was

not a residence, as called on the drawing, it was for an institution (7800-1).

On cross-examination by counsel for Massachusetts, witness testified that he does not remember what it was called on the drawings,—a residence, a house or something else (7801); that in an interview with Mr. Cole, counsel for New York, he was not shown the drawings and simply recalled the conversation from recollection without any papers or drawings (7802); that Green did not say what kind of an institution it was to be (7802).

On cross-examination by counsel for Florida, witness testified that he set out to carry out the plan which was evidently for a residence and then was instructed that it was not to be considered as a residence so they had to interpret it and built it with a bold front, a front commensurate with what a public institution would have rather than a private institution or private residence (7805); that by boldness, he meant to have a façade or front that would attract the public's attention so they would know it was not a private home (7806).

Counsel for New York gave in evidence N. Y. Ex. No. 236, a copy of a letter from W. P. Allen to Green, January 22, 1923 (7812), in which he said:

"It has been raining here for the last Two Months. I hope that you can arrange your affairs so that you can come to Texas one more time on your trip back home."

Frederick J. Hartwig, of Bronxville, New York, testified that he was an architect and had been in charge of the office of Alfred C. Bossom since 1914; that his employment ceased about 1929 or 1930; that he laid out the preliminary drawings and made the sketches and designed the exterior of the Round Hills House, under Bossom's direction (7818); that Bossom said it was to be laid out in such a way that it could later be converted into a hospital or public institution; that he believes hospital was the correct word; that witness laid it out with the idea of having a general hospital plan, such as a hospital would be, in a kind of H form, with a corridor down the center, and an opportunity to lay out sections as flexible as possible with small rooms or larger rooms as the case might require, and windows so

spaced that there would be a good many windows; that the original instructions with respect to the layout of the building were carried out (7819); that he never met Colonel Green; that the building was fireproof; the outer walls were bearing walls and inside there were columns of reinforced concrete, with floor slabs of reinforced concrete and terra cotta tile supported on reinforced concrete girders and on the bearing walls on the outside (7820); that the roof was of light steel construction and the reinforced concrete columns served the same purpose as steel columns; that the partitions were fireproof and the exterior was steam-faced granite; that the roof was of slate; that some of the floors were of wood and some of marble and tile; on the second and third floors, some of the floors were wood; that there was wainscoting in the principal rooms and that the bathrooms, of which there were no more than in that type of house, he thinks, were of tile (7820-23); that the partitions may have been terra cotta or gypsum block, but the plans indicate terra cotta; both serve the same purpose but gypsum is cheaper (7826); the exterior walls are brick and stone and each wing is enclosed in brick (7827); on each end of the building is a long rectangle 29x54'; that terra cotta has weight carrying capacity when used in small construction but not in a building like this (7829); in this building the terra cotta partitions carried no weight; the interior walls could be easily removed in case of alteration (7830); certain of the fireplaces only go to the ceiling of the first floor or the ground floor level and the weight is carried by the floors, they could be removed without difficulty (7830-1); that to convert the building into a hospital or other institution, it would be redesigned on paper, so as to make a hospital layout, and such of the partitions retained as were necessary and the others eliminated; the rooms on the second floor could be subdivided so as to have a window in each room and would be about twelve by twenty-three (7831); that the plans prepared for Round Hills made provision for a monogram over the main doorway (7832); that Maurice J. Sullivan called upon him in September, 1937, at his office in New York City, but witness never said to Sullivan that it was impossible to carry out the original plan to build the Round Hills house so that it could be turned into a hospital (7833).

On cross-examination by counsel for Massachusetts, he testified that the fireplaces which rested on the second floor did not have flues going to the basement and each of the chambers on the second floor had a tile bathroom; that if the building were converted, the procedure would be to remove all of the interior of the second floor; that this matter was not discussed at the time but they simply made it structurally possible to convert the building into a hospital without shoring or anything unusual (7837); that while conversion was possible, the only details worked out on the plans were the actual residential details; the monogram contained the letters E. H. R. G.—the drawing for it was given to a modeler to work into clay but he does not know whether it was ever sent to the premises or whether the stone was actually cut from the model (7839).

Massachusetts Evidence

Counsel for Massachusetts took the deposition of Rezia (Mrs. Bondurant N.) Jarvis at her residence, 503 Pacific Avenue, Terrell, Texas, on October 20, 1937. The witness testified she had met Colonel Green and that Mr. L. W. Wells, who was related to her by marriage, told her that Green wanted a room in her house and she told him such a room was available (1784); she thereafter received $5.00 a month for three years from the American National Bank, when the payments stopped (1785); at the beginning of this period, the date of which witness could not remember, she testified an unfastened box was left at her house and carried up to the room reserved for Colonel Green; the box contained a part of a man's suit—trousers and vest but no coat. So far as witness knows, Green never came to the house and never slept there; she was away in Summer but never heard that Green had come in her absence (1787-8).

On cross-examination by counsel for Texas, witness testified that she moved to her present residence in 1895 or '96 (1789). The house is owned by witness and her husband; is a large house with nineteen rooms, with the usual living room, dining room, kitchen and family quarters (1790); that Green was a very prominent man in Terrell; witness visited his demonstration farm several times and saw his greenhouses, which were matters of great interest

to the public; Green was highly regarded in the community; witness has made trips on his private car with Mr. Wells and his family (1791-2); that the room rented for Green was furnished by her and not by him and was kept available for him at any time he wanted it; it was a nice commodious room, as large as the parlor of the house (1793); that her house is in Ward 3 and was at that time.

Witness identified a photograph of her house which was offered as Tex. Ex. No. 87.

On cross-examination by counsel for Florida, the witness testified that she made some distribution of the contents of the box after several months; that she would see Green in Terrell but never at the house; that no one came to look after the box of clothes (1795-6).

On cross-examination by counsel for New York, witness testified that she had no arrangement with Green about any special room but if he had come himself he could have selected his room (1796); she does not recall any conversation excepting one with Mr. Wells, who said he wanted a room for him; there was no rent agreement regarding it (1797).

At the hearing in New York City commencing January 22, 1938, counsel for Massachusetts gave in evidence Mass. Exs. Nos. 35 to 47, which had been identified at the hearing in Texas (4889). Ex. No. 35 being a list of Directors' meetings of the First National Bank and American Exchange National Bank, of Dallas, Texas, from April 7, 1900 to May 3, 1921, which were attended by Green after his election April 6, 1900 (4890-93). Ex. No. 36, statement of monthly bank balances therein from October 20, 1900 to March 31, 1937 (4893-4901). Ex. No. 37, signature card, dated August 5, 1897, and statement of monthly balances of Mrs. M. E. Staunton in the National Exchange Bank of Dallas, Texas, November 1, 1900 to September 11, 1911, when the account was closed (4902-8).

Ex. No. 38, excerpts from the Minute Books of the Murray Company, of Dallas, Texas, pertaining to the original appointment of Green as a Director and his election in subsequent years, covering the period from October 20, 1909 to February 18, 1936 (4908-28), indicating in the minutes of the meeting January 13, 1931, that E. H. R. Green and Walter P. Allen were residents of Terrell, Texas; no designation of residence being given in subsequent years. Ex.

No. 39, a letter from Henry C. Coke, attorney at law, Dallas, Texas, January 18, 1912, to Green, 111 Broadway, New York City, inviting him to subscribe to the reorganization of the Max Hahn Packing Company, in which he was a stockholder (4929). Ex. No. 40, letter from Green, dated January 23, 1912, in reply to Coke, in which he says:

"I don't care to put any additional money into the new enterprise, as I have left Texas probably for good and cannot be there to hobnob with Ferris, Jackson and Hahn. I do not care to take any of the new stock and will sell what equity I have in it for $2500.00" (4931).

Ex. No. 41, letter from Green, 5 West Ninetieth Street, New York City, dated July 29, 1916, to E. M. Reardon, American Exchange National Bank, Dallas, Texas, in which he says:

"Now, Reardon, in regard to the directorship in your bank: Of course my duties in New York are going to require that I remain here, except two short visits to Texas in May and November; therefore, I don't know as I will be of any benefit to you as a director, etc." (4932).

Ex. No. 42, reply from Reardon August 1, 1916, to Green, New York City, in which he says:

"I notice what you say about your occasionally visiting Dallas. I presume it will be imperative for New York to remain your headquarters, but I hope that you will visit Dallas often, and stay longer than you have in the past. Our newspapers here have stated at different times that you would make your home in Dallas. This has been quite extensively copied and discussed by your numerous friends, and a great many have asked me if it were true, and they have hoped that such was the case, as everybody down here has a very high regard for you, loves you, and would like for you to live with us permanently. I should like to see you do this myself, but I realize it is probably out of the question. However, when you visit us, you will be received with open arms by everybody here, by your close friends, and the writer" (4933-4).

Ex. No. 43, photostat of check of Green to the order of the American Exchange National Bank, Dallas, Texas, dated May 11, 1921, on the Seaboard National Bank for $100,000,

showing it had been deposited in the American Exchan
National Bank (4935). Ex. No. 44, letter from Green
Reardon May 24, 1921, enclosing foregoing draft and stati
"Mrs. Green and I had a very pleasant return journey fr
Dallas, and arrived home safely after our very enjoyal
although somewhat strenuous trip" (4936-7). Ex. No.
letter dated May 24, 1921, from Green to Edwin Hobl
Vice President, Security National Bank, Dallas, Texas,
garding the above check in which he says, "I understa
that the late unpleasantness has passed, and that you w
be in a position to make return of these funds without a
inconvenience to you" (4937). Ex. No. 46, letter fro
W. B. Scott, President of the Southern Pacific Lines,
Green, New York City, October 11, 1917, regarding propos
conference.

Ex. No. 47, reply from Green to Scott October 13, 191
saying:

"I am in receipt of yours of the 11th instant, and regr
very much not being able to see you in New York. I expe
to leave here about October 24th on my yacht for Texa
and the only definite date I have fixed is that I wish to b
in Terrell to vote on the 6th of November. Upon my arriva
in Texas I shall take pleasure in calling on you at Houston
either on my way up to Terrell or on my way back" (4939

Counsel for Massachusetts further gave evidence by th
following witnesses tending to prove:

MARY STAFFORD, of New York City, testified that he
family formerly lived in Texas and became acquainted wit
Green at the Windsor Hotel in Dallas about 1905, whe
she was nine years old; Green was then living on Elm Stree
and Miss Mabel Harlow, sometimes known as Mrs. M. E
Staunton also lived there; after they moved to the Com
merce Street house and up to 1910 witness often visited
them (4951-2); they came East about 1911 and witness
visited them in the Fall of 1916 at 5 West Ninetieth Street
for from three to six weeks; witness was then married
(4953); she next saw them July 10, 1917, at Highland Park,
Illinois, where they were married and after that in August,
1917, on the yacht "United States" and remained with
them until December 22nd; they went from Glen Cove,
Long Island, to Block Island, then to Buzzards Bay, back

to New York and then to Texas; while at Glen Cove, Mrs. Green and witness discussed with the Colonel the building of a home on Long Island and he said he did not want to—he did not want to pay taxes in New York State (4955-6); later, when they were in Buzzards Bay, near Round Hills, he talked of building a house there on account of his mother; witness and Mrs. Green expressed a preference for building at Glen Cove and he said he did not want to build on Long Island but wanted to build on his mother's place at Round Hills (4956-7); on that trip to Round Hills witness met Mr. Gideon Howland, Green's cousin, who came aboard the yacht; they went ashore and around the premises and bathed on the beach while they were there; in October they started on their cruise to Texas, encountered storms and had a miserable trip (4958); in Galveston, they met Green's friends and witness went to visit her brother and Green went to Dallas or Terrell; after he returned to the boat they went to Corpus Christi on a fishing trip and returned to New York about the middle of December (4959); she next saw Green in Chicago in May, 1918, and he told her she must come to the Waldorf because he did not want her living alone in New York; that witness came East with him and Miss Harlow about the 18th of May and a few days later began an engagement on the stage with a company at the Winter Garden, remaining with the same company in different shows until 1921 or 1922, and during that period she stayed with Colonel and Mrs. Green at the Waldorf (4960-62); in the Summer of 1918, about the 30th of June, Green went to Round Hills on the Fall River boat (4963); witness lived at the Waldorf and every week when Green came to his Directors' meeting she would see him; he usually arrived on Thursday morning and left Friday evening; while there he used to go to the show at the Winter Garden (4964); they returned from South Dartmouth about October and went to Texas about the middle of November; the Winter of 1918-19, they spent at the Waldorf, New York City (4966); they went to Round Hills about June 30th, 1919, and witness spent four or five weeks with them on the house boat "Day Dream" after the sinking of the "United States"; August 22nd was Green's birthday and he was in New York for a Directors' meeting and the yacht capsized on the 19th or 20th, just before his birthday (4967); during that Summer he came to New York to Directors' meetings usually travelling on the Fall

River boat; he would attend the meeting, shop and go to the theater in the evening (4968); in 1919, they lived at the Inn at Round Hills and the next Summer on the house boat "Day Dream" when witness visited them (4969-70); Green was very busy getting ready for the house and watching the building (4970); the Winter of 1920-21, they lived at the Waldorf and witness lived with the family, which comprised Colonel and Mrs. Green, Ruth Lawrence and witness (4972); Walter Marshall, the secretary, lived in the house at Round Hills but not in New York; Ruth Lawrence (granddaughter of Judge Lawrence), Dana North and Dorothy Marshall (daughter of his secretary) visited them in the Summer (4973-4); these girls and a French girl, Jenny Turpaud, were protegees of Green and educated largely by him (4975-6); in the Summer of 1921, about June 30th, the Greens left New York for South Dartmouth; the Round Hills house was open that Summer and witness remained there the entire Summer (4977); they returned the latter part of October and Green went to Texas and Mrs. Green, the maid Gerta and witness went to French Lick, where they received a telegram from Mr. Marshall, stating that Green had received an injury or was ill and returning to New York; they returned to the Waldorf and found Mrs. Wilks and a doctor with Green (4928); witness recommended her physician, Dr. Pascal, to Green; the doctor said the injury had caused water on the knee or something and he must stay off of it for some weeks; the first or two days he was up he fell against something and hurt his knee (4979); about January, 1922, witness went with Green, Mrs. Green and Gerta Larsen, his nurse, to Marlin, Texas; Green also went to Terrell and they all went to Dallas at the conclusion of the trip; Green said the treatment had benefitted him and later they returned to New York; in the Summer of 1922, they left for South Dartmouth about the usual time (4981-2); a brother of witness sent Green a radio from Dallas while he was in Marlin and he became much interested in it and bought several sets and had some sent to Round Hills; this was the beginning of what later developed into the Round Hills Radio Corporation, of which witness was a Director; that Summer Green spent a great deal of time out of doors in his little automobile called the "cream puff" (4983). Witness identified Mass. Ex. No. 393 as a picture of the automobile and it was given in evidence (4984), and said he used this car a good many

years at Round Hills. She also identified photographs of the sun porch and the radio station (with Green at the radio station) and the same were given in evidence as Mass. Exs. Nos. 394 and 395 (4986). Also identified photograph of the radio broadcasting studio, containing pictures of the witness and her two cousins, and the same was given in evidence as Ex. No. 396; also photograph of the loud speakers on the water tower which was given in evidence as Mass. Ex. No. 397 (4987-8). Witness further testified that Green stayed a little later each year at South Dartmouth—one year stayed very late (4989); he also told them he could not stay there longer than six months, that he had to get out before six months, as he explained, on account of the taxes, and would divide the rest of the time between New York and Florida (4989-90); that witness was at Round Hills again in the Summers of 1923, 1924, 1925, 1926 and 1927, the last year she was there; that Green was usually building something; when he tired of the radio he started on the airport and the dredging for the "Charles W. Morgan" (4991); he did not discuss his plans with them and never told them in advance when he was going to leave; that Mrs. Green and witness were told by Mr. Marshall when the private car was ordered (4992); that when getting ready to go to Round Hills witness noticed that Green was very happy and when getting ready to leave he was very sad, always in a bad humor (4993); from 1922 to 1927, when at the Waldorf, he would have his breakfast, perhaps be dressed by Gerta, sit at his desk and work on his stamps and different people would call—that was about all he did; during this period he went out several times in his automobile; he had his catalogue and stamps in front of him and semed to be working on his stamps all the time (4994); he was confined to his apartment practically all of the time and did not enjoy it at all (4995); in 1923, witness went with Green and Mrs. Green to Miami, staying at the Royal Palm Hotel; they took trips on the canal practically every day; Green became interested in the house boat "Pioneer" and bought it and they boarded her at Jacksonville and took a fishing trip (4996); in 1924, they went from New York to Jacksonville and went aboard the house boat "Colonel", which Green had built; this was the year Green purchased the Star Island property (5000); that from the time he suffered this illness in Dallas in 1921 through 1922, 1923

and 1924, aside from the fact that he was crippled and not able to get about "he was perfectly all right;" Dr. Pascal would call on him before and after his trips (5001); in the Summer of 1925, at South Dartmouth, Green suffered a severe illness, while Gerda Larsen, his nurse, was in Sweden; witness had returned to New York from a week-end trip and was called by Mr. Walter P. Allen, got on the train, went to Round Hills and found Green very ill; asked Mrs. Green to send for Dr. Pascal and Mrs. Green said she was afraid to do so without Green's permission; after talking with him, he told witness she might send for him and she came back to New York, called up the doctor and also Mrs. Wilks and told her to come to Round Hills, that he was in a very serious condition (5002); in 1926, witness was with the Greens at Miami Beach and at South Dartmouth; his health was much better than in 1925; that year he left in December; witness was with them in 1927 at Miami Beach and at South Dartmouth but left them about September 15th or 17th and shortly thereafter went to Europe, where she remained until 1934; she never saw the Colonel after 1927 but saw Mrs. Green in 1936; that Green often talked with her about his mother, of whom he was very fond; sometimes he would cry when he was speaking of her (5004); he always objected to Mrs. Green and witness going to New York during the Summer, he said he had built this home and wanted us to stay there and we had to; he said he was a resident of Texas, "we always laughed about that because he did not have a home there;" he said he had a room with Mrs. Jarvis, with a trunk, and paid $5.00 a month for this room (5005); he stated one time that as soon as he got rid of the Texas Midland Railroad he was not going back to Texas; he always called the Midland a white elephant, he said, "Mary, when I unload this white elephant I am not going back to Texas" (5007); Green did not care for society and entertaining; he did not care to make friends; when he went to Round Hills every one in the Summer colonies called but he did not return their calls; he seemed to enjoy association with the people that came out to Round Hills to listen to the radio or the people that were working on the place (5008); during the time witness knew him, he was not affiliated with any churches or religious organizations (5009).

On cross-examination by counsel for New York, witness testified that she was originally from Dallas and her brother

was an electrician there; that witness was married to Dr. Eckles in Dallas in 1912 and Green was then living in New York (5010); that according to her recollection he left about 1910 or 1911 and she next saw them in 1916 and was matron of honor at their wedding; that she had been in correspondence with Mrs. Green meanwhile and went on the honeymoon trip on the "United States" (5012); that she made her home with the Greens in New York from 1918 to 1927; she was never Green's ward but he supported her and furnished her with funds to live on during this period (5013).

On cross-examination by counsel for Texas, she testified that she knew Green had passed a good deal of blood and that Dr. Pascal said he was suffering from chronic anemia; he was a very strong man but she did not mean to say he was in perfect health (5016); that his illness in 1925 was rather sudden; Gerda left and after she left Green did pretty much what he wanted to and took bromo-seltzer and codeine; it required the constant attention of the nurse to watch him to prevent him from practically destroying himself with stuff like that (5019); the students from the Massachusetts Institute were not there when she was there; that it was before she left that he lost interest in the radio (5022); that he took a good deal of pride in his Texas activities and talked with witness about them (5024); during the period she was in Europe from 1928 to 1934, she was in correspondence with Green and Mrs. Green but did not see him again before his death (5025); that she receives an annual income of $2,600 under the Terrell Trust, of which Mrs. Wilks and Mr. Allen are Trustees (5026); these payments, for good reason, may be stopped by the Trustees (5028). On Cross-examination by counsel for Florida, witness testified that she visited Colonel Green and Miss Harlow in Dallas the first time in 1910 and there was no one else in the household except the servants; she visited them on Commerce and also Elm Streets (5029); the last time she visited them was in 1910 just before they went to New York and the next was the visit in 1916; that at Elm Street she only stayed an afternoon or night but at Commerce Street she stayed perhaps two or three months (5030); that when witness was a baby in Dallas until she went to California they had her with them a good deal (5031); Green never said whether he occupied the room in Terrell but stated he was keeping it because he wanted to

establish a residence in Texas and on account of Texas taxes—to avoid taxes; he used to joke a good deal about the room—his home in Texas—but witness does not remember exactly what he said; he also laughed about the room and trunk (5032); between 1910 or 1911 and 1916 she corresponded with Colonel Green and Miss Harlow from Chicago to New York at 5 West Ninetieth Street and visited them at this address; the household consisted of Colonel Green, Miss Harlow and the servants and was equipped as a residence, with a dining room, bedrooms and all the things that go to make a home (5034-5); witness stayed there six weeks and returned to Chicago; the next visit was when they were married at Highland Park, Illinois; Mrs. Green asked her to be matron of honor; she joined them on the "United States" at the Columbia Yacht Club or Glen Cove, went to Block Island, Buzzards Bay and back to Glen Cove and the Hudson; that witness spoke of buying an estate on Long Island and thought it was much nicer to have an estate in Long Island than in Massachusetts, that Green did not think so and said he wanted to avoid taxes; they went on this honeymoon in the "United States" to Florida and Texas and stayed at Tampa (5037-8), and then to Galveston and left the boat for Dallas, re-embarked at Galveston for New York, stopping at different places, reaching there about the middle of December and remained on the boat until December 22nd (5039-40); in May, 1918, Green and Miss Harlow came from Texas, joined her in Chicago and they came on to New York and went to the Waldorf, where he had living quarters and slept and ate; that was their home (5041); on the first visit to Florida in 1923. Green made no arrangements for the delivery of any boat; they stopped at the Royal Palms Hotel, a very expensive place and stayed there two or three months (5045); they cruised around in a boat chartered for the day but frequently motored; he went from there to the Windsor Hotel in Jacksonville and remained a week or ten days waiting for the "Pioneer" which he had just bought (5046-7); he had to wait several weeks for its delivery and they then went on a fishing trip for about ten days (5048-9); the "Pioneer" was a large comfortable house boat; when they went to Florida in 1924, they waited at Jacksonville several weeks for the house boat "Colonel"; Green had a derrick on the front of it and it was a funny

looking boat, a monstrosity, and the canal was not wide enough for the boat and they got stuck (5052); they went from there to Miami and stayed that Winter in the house boat; that was the year he bought Star Island; Green was always busy shopping and driving around; witness liked Star Island; it was very beautiful (5054); in 1925, when they returned to Florida, they went aboard the "Colonel"; Green was very busy with the building operations at Star Island; was not home very much (5054-5); the house was not completed in 1926 but witness spent one night there (5057); in 1927, they were installed in the house; beautifully furnished; much of the furniture had been made for the rooms; the grounds were landscaped and very beautiful and drives were laid out; it was one of the show places there and the Island was occupied by the finest residences; there are no business houses, radio apparatus or "hot dog stands" around there (5058-9). The witness further testified that in the Summer of 1927 she went to Round Hills in July and remained until about the 15th or 17th of September; that she never saw any good weather up there; it was not always foggy; oftentimes they could not have the display of fire works on the 4th of July because of the fog—the dampness; that Round Hills is between Nonquitt and Salters Point, colonies of Summer residents (5062); that after the early Fall the houses are boarded up for the Winter but a few people remain there (5063); that Green broke ground for the foundation, then he left for New York; in 1921 and the next year he kept working on the radio; that he lost his interest in the radio when he started the airport which was laid out in front of his property (5064); that Green was not inclined to talk about his business and witness and Mrs. Green knew nothing about the "Charles W. Morgan" until they saw the dredge coming in, and building of the foundation started (5066); that Green had not lost his interest in the airport when witness left in 1927 (5067).

On cross-examination by counsel for New York, witness testified that when Green came East from Texas in 1910 or 1911 he went to the Waldorf-Astoria, New York City; he was with his mother at that time and told witness his mother was making her Will and it took her three weeks to do it (5068); witness saw the furniture at 5 West Ninetieth Street in Dallas in the Commerce Street house oc-

cupied by Green (5069); she made her home with the Greens at the Waldorf from May, 1918 until 1927—wherever Green's home was was witness' home; that Green had two chauffeurs and two Pierce-Arrow cars in New York, which bore New York registration plates all the time he lived in New York (5070-1); that Ruth Lawrence lived at the Waldorf during the Easter holidays and at Christmas and when she came from Wellesley in June until she left for Round Hills (5072); that witness could not see any great improvement in Green's condition after he went to Dr. Buie's clinic (5073); whenever Green went to Massachusetts, Florida or Texas he returned to New York (5074); that the radio sets bought by Green in 1922 were delivered to the Waldorf (5074); that Green had a habit of taking up something, becoming very much interested in it and then dropping it for something else; that he was happy when moving to Round Hills and sad when returning because he disliked being housed up in the Winter and liked to be in the open in the Summer (5075-6); but he liked Round Hills also (5076); sometimes he was interested in his stamps; sometimes not; when he got some new ones he was very much interested and spent a great deal of time going over and arranging them (5076); witness remembers that Green had a blood transfusion and an operation but cannot tell which came first; that he never complained until the dentist extracted all of his teeth and then wanted to take out his tonsils (5077-8); in 1919 or 1920, he got a nurse and always kept one after that, even in 1922 to 1924, when witness said he was in good health (5080); up until 1921, Green always attended theaters and baseball games; he liked first nighters but stopped going to them because his knee hurt him and it was difficult for him to get in and out of the theater (5082).

On redirect examination by counsel for Massachusetts, the witness testified that she had been receiving the same annuity for many years prior to Green's death; that his boat "Ruth Dana" was named for Ruth Lawrence and Dana North and the "Mary" for witness and "Mabel G." for his wife (5084).

On cross-examination by counsel for Texas, the witness testified that from going with or conversations with Colonel Green she knew he cast his vote in Terrell, Texas, and knew it was very important for him to get there in the Fall; that he was devoted to his politics (5084).

Thereupon, counsel for Massachusetts gave in evidence the following Exhibits relating to domicile, etc.:

No. 69, letter, dated February 21, 1914, from Charles W. Pierson to Green (5092) reading:

"Section C of the Federal Income Tax Law provides that returns of individuals subject to the tax shall be made 'to the Collector of Internal Revenue for the district in which such person resides or has his principal place of business.'

In view of this provision I am of the opinion that a resident of the United States may lawfully file the return in the district of his or her residence, and that this right conferred by the statute cannot be taken away by regulations of the Treasury Department.

I understand that the residence of your mother, Mrs. Green, is Bellows Falls, Vermont, and that your residence is Terrell, Texas. In my opinion she and you may lawfully file your income tax returns in the districts of your respective residences" (5092-3).

No. 70, letter to Charles W. Pierson December 30, 1918, from Walter H. Marshall regarding Massachusetts income tax for 1919 and enclosing a notice in which it was stated that a penalty of $5.00 a day would be charged if no return is filed by March 1st (5097-8).

No. 71, Pierson's reply to Green January 3, 1918 (should be 1919) (5101) reading:

"Mr. Marshall sent me a State Income Tax Notice received by you from a bank in New Bedford with the inquiry whether or not you should pay any attention to it.

The Massachusetts Income Tax Law provides (Section 12):

'Every person who is an inhabitant of the commonwealth at any time between the first day of January and the thirtieth day of June, both inclusive, in any year, shall be subject to the taxes imposed by this act.'

As to what constitutes an inhabitant an official ruling of the Tax Commissioner provides:

'The word inhabitant as used in Chapter 269 of the General Acts of 1916 shall denote a legal resident in this commonwealth, a person whose legal domicile is herein.'

In a letter from the Massachusetts Income Tax Deputy dated September 14, 1916, it is said:

'The word inhabitant has in the past been used in all of our laws relating to taxation, and signifies a legal resident or person having a legal domicile in Massachusetts. There would, therefore, be no tax imposed on a person who is a legal resident of New York City who resided temporarily in Massachusetts.'

As your domicile is Texas it would seem, therefore, that you are not taxable under the present Massachusetts Income Tax Law although you spend part of your time at your Round Hill Farm in Massachusetts" (5101-2).

No. 78, letter from Ernest R. Duff, South Dartmouth, February 26, 1919, to Green, New York City (5104) reading:

"The last time I saw you you said you would see Mr. Pierson in regard to whether it made any difference as to *Taxation* if the 'United States' was in Massachusetts waters on April 1st or not, and let me know the result so that I could arrange to have the ship out of the state on that date, and arrange to have her hauled out and inspected at the same time. I find that the Crowning Shield ship yard across from Fall River will undoubtedly be able to haul us, also the Thames Tow Boat Co.'s Dock at New London, Conn. These are the only shipyards between Boston and New York with the capacity to Dry Dock the United States, and before they will accept the job, must have the approximate dead weight of the ship which I have written to Geilow & Orr, to kindly furnish me with, both of these yards (as I presume all others are) are under the control of the U. S. Shipping board whose consent has to be obtained before a job can be accepted" (5104-5).

No. 79 and 79-A, Green's reply to Duff March 10, 1919, enclosing memorandum from Pierson dated March 6, 1919 (5107-11), concluding:

"I am therefore of the opinion that if a yacht removes from Massachusetts waters before the assessment day, April 1st, that it would not be taxable as it would not be within the jurisdiction" (5111).

No. 80, letter from Green to Duff March 10, 1919 (5112), reading:

"In regard to the hauling out of yacht UNITED STATES, I would suggest that you have her hauled out to New London, in Connecticut, the latter part of March. This is in answer to your letter of February 26th.

I would have her painted black with gold stripe at the same time. Advise me before leaving New London on the return voyage whether to bring her to New York or not" (5112).

No. 81, letter from Green to Oliver Prescott, New Bedford, Massachusetts, April 2, 1919 (5114-16), reading:

"I am in receipt of Form of List of Polls and Property which I am supposed to have at South Dartmouth, but I don't know what the custom is in your State.

Aside from the wharf at South Dartmouth I have about $8,000 worth of crated machinery, which I would consider personal property. The building and wharf, of course, would come under real estate. The property at Round Hills consists of new houses and some new farming equipment.

Being a non-resident of your city, I would like to have you suggest the proper way for me to outline my tax list up there, and advise what the custom is. Very luckily for me, the yacht United States happened to be in New London on the first day of April to go into dry dock. Therefore, I suppose that is not taxable. I have a lot of little boats which do not really belong to the farm.

In the State of Vermont it is sometimes best to let them 'dun' you, while in other States it is best to itemize the buildings, stating the estimated cost of them. I am absolutely unfamiliar with the custom in your section of the country, and would like to have your opinion as to the proper tax for me to pay in South Dartmouth. Of course, you understand that personally I am a resident of the State of Texas and do not live in South Dartmouth nor visit there between the months of January and July. Therefore I do not come under a Resident Tax, as Terrell, Texas is my legal home" (5115-16).

No. 82, letter to Green, New York City, from Charles W. Pierson April 25, 1919 (5117), reading:

"As you doubtless know, the Legislature at its session just ended, passed an income tax law which is now before the Governor for approval. The rate of tax is 1% of the

amount of net income not exceeding $10,000, 2% of the amount in excess of $10,000 but not in excess of $50,000, and 3% of the amount in excess of $50,000.

As you may not have seen a copy of the bill I quote the following provisions for your information:

Under Section 351 the tax on non-residents is upon the entire net income "from all property owned and from every business, trade, profession or occupation carried on in this state by natural persons not residents of the state" (5117-18).

No. 104, letter from E. M. Reardon, American Exchange National Bank, Dallas, Texas, to Green October 1, 1920 (5120), reading:

"There are two States in the Union which have the community property law—one is Texas, and the other is the State of Washington. These, I understand, are the only two states which have such a law. A late ruling of the Treasury Department at Washington is that all *incomes* of *married men* can be classed as community property, and so taxed. Thus, instead of pyramiding one large income, you can make two *incomes* out of it, paying the tax on each income. So, if you are a citizen of Texas, and I take it you are, it might be well for you to look into this, for it would be a great saving to you.

For your information, I enclose you herewith the printed rulings which have been handed me by an auditing firm here. I take it that, in case of death, the entire property would *not* be considered community property. As I look at it, it is simply *that the earnings* of the property of a married man can be construed as community property, *and taxed as such.* So you can see yourself, instead of paying the income tax on the one income, it can be regarded as two incomes, and taxes paid accordingly" (5120-21).

No. 110, letter from Green, New York City, to the Assessors of the Town of South Dartmouth, Massachusetts, May 20, 1921 (5123), reading:

"Relative to placing an assessment on my property at Round Hills and on the machine shop at South Dartmouth.

I am perfectly willing to give you the details and contracts of what we were actually compelled to pay and the additional bills that we were forced to pay on account of

the unfortunate war that has just passed. As you gentlemen are aware, labor during that period was abnormal, and also the prices for certain classes of material that went to build the house. I shall be very glad to show you my books and help you in any way that I can, and I expect to be at South Dartmouth during the middle of next week, at which time I will call upon you and get your ideas of what you would like to have me furnish you for your assistance. I want to be perfectly fair and want to pay my share of the taxes of your town, as my intentions are to remain with you, but I do not think I should be called upon to pay on values that were used during the war when men were getting $12 a day for work that can be done at the present time at $4.50 and $5.00, because I have no real benefit from that, and that is not an actual value.

I shall also be glad to show you our contracts for the furniture, rugs, carpets, etc., which have been greatly overestimated in the newspapers, as you know how these things are done. The only possible objection I can possibly make to giving the figures at the present moment is that I do not believe that persons who have built during the period of the war should pay taxes on the high cost of labor because they have nothing to show for it" (5123-24).

No. 128, letter dated November 3, 1922, from P. C. Lee to Charles W. Pierson regarding taxation of the yacht "United States" (5127), reading:

"Several days ago the enclosed notice was received from Wm. C. Lothrop, Collector, Galveston, Texas, showing a Property Tax assessed against Colonel Green of $555.00. Inasmuch as the Colonel owns no property either in the County or City of Galveston, we are under the impression that the tax must relate to the yacht 'United States' as Galveston is its port of registry. I took the matter up with Colonel Green, and this morning received a letter from him reading as follows:

'Replying to yours of October 26th, enclosing tax bill on the "United States" amounting to $555.00, I would suggest that you have Mr. Pierson write the Collector at Galveston, Texas, that the yacht "United States" was sunk in Apponagansett Bay, near South Dartmouth, Mass. in the year 1919, and a wrecking party towed her into New York and patched her up; that her inside furnishings have been

removed; that she has been on the market for sale, that it has been impossible to get any bids; that it wo require someting like $50,000 to put her engines and h in proper repair; that she cannot be moved under her o power and that she has not been in the Port of Galvest for five years' " (5128).

No. 145, letter from W. P. Allen, Terrell, Texas, to Gre at Jacksonville, Florida, January 21, 1924 (5130), in whi he says:

"I am herewith enclosing your Poll Tax Receipts, bo County, State and City for the present year. I presu that you still wanted me to pay these as this is electi year and you had not instructed me otherwise" (5131).

No. 189, letter from said Allen to Green, Miami Beac Florida, January 17, 1925 (5132), reading:

"I received your telegram this morning, and I am her with enclosing you the poll tax orders. I forwarded the to New York two days after I wrote you the letter, as found I did not have any at the time, and they probab will reach you before this does. However, as I wrote yo the last time, I will pay them and get the receipt any wa but I did not know Mrs. Green's age, and will have to gue at it, however, I can have it rectified after you send n this" (5133).

No. 190, letter to said Allen from Green, Star Islan Florida, January 19, 1925 (5134), reading:

"I am today in receipt of your letter of the 12th, enclos ing poll tax order, which I have signed and return here with.

In regard to the coming change in Post Masters at Ter rell, if I am requested to endorse any candidate, you ma rest assured that I shall do nothing until I hear from you

Thanking you for attending to the poll tax matter, remain" (5135).

No. 191, letter of said Allen to Green at Star Island Florida, January 24, 1925 (5136), reading:

"I received your letter of the 19th, with the poll tax orde enclosed, and I am herewith enclosing you both the City State and County poll tax.

Very glad indeed to know that you decided not to move your official residence to Florida" (5136).

No. 207, letter to Green, New York City, from Charles W. Pierson July 8, 1926 (5138), reading:

"Mr. Potter has shown me the bill from the County Tax Collector at Miami for personal tax for the year 1925, including a poll tax of $1.

Unless you have decided to change your legal residence to Florida, I think this poll tax should not be paid, as its payment might be held to constitute some evidence of intention to make Florida your legal residence.

The provision of the Florida Statute is:

'A poll tax of $1. shall be levied upon each male person over the age of twenty-one years and under the age of fifty-five years who has resided in this state more than one year.'

I suggest, if it meets your approval, that you send a check for the amount of the bill, less the poll tax, accompanied by a note to the effect that you have not resided in the state more than one year within the meaning of the taxing statute" (5138-39).

No. 215, letter from said Allen to Green, New York City, December 14, 1926 (5139), reading:

"It is getting about the time that we were paying yours and Mrs. Green's poll tax again, and I presume that you still want me to pay it in the County.

I can wait until January 31st, and if I do not hear from you to the contrary, I will pay it as I have done heretofore" (5140).

No. 217, letter from said Allen to Green at Star Island, Florida, January 28, 1927 (5141), reading:

"Not having heard from you to the contrary, I paid the Poll Taxes as I have heretofore done, and enclose you the receipts.

Think I will get down there somewhere about March 1st, and am thinking of coming Via Galveston and Key West; believe a little water trip would do me good" (5142).

No. 218, letter from said Allen to Green February 1, 1927 (5144), stating:

"I herewith enclose you the City of Terrell Poll Tax receipts which I failed to send you the other day through an oversight" (5144).

No. 219, letter from Green to said Allen February 11, 1927 (5145), reading:

"I am very much obliged to you for looking after the poll taxes, and beg to enclose herewith my check No. 7517 for $5.50 to reimburse you.

Trusting we may have the pleasure of seeing you here at Star Island some time before the season closes, and with best wishes, I remain" (5146).

No. 220, letter from Green to Charles W. Pierson, New York City, March 28, 1927 (5147), reading:

"I am in receipt of your letter of March 25th, advising that Mr. Locke, as attorney in fact, filed a petition in my behalf in connection with the petition on appeal to the United States Board of Tax Appeals from the ruling of the Commissioner of Internal Revenue disallowing the claim for deduction on account of the loss of my yacht, for which please accept my thanks.

Yes, I am enjoying my life down here very well, in the land of oranges and alligators.

There is a question coming up soon in Texas, which I expect to discuss shortly, and that is the matter of the lease or sale of the Texas Midland Railroad. What has been going through my mind is this: Would it not be better to make a sale and take a loss, which we might be able to use as a deduction in the Income Tax? Of course, if we lease the road it will be at a loss, and a lease would be for so long a time that it would be the same as a sale, and we could not use it for tax purposes. I will appreciate it if you will advise me just along what lines to talk in my discussion, and I will be governed by your advice" (5147-48).

No. 223, letter from Green, New York City, to W. P. Allen, June 27, 1927 (5149), reading:

"There has been no change in the situation regarding the Midland. When there is, I will keep my promise and advise you.

I get pretty stiff now and then here in New York but my general health seems to be pretty good, and I think I will feel much better when I get down to the farm, where I can be out all day in the sunshine and fresh air. We leave here the night of June 30th" (5150).

No. 233, letter from said Allen to Green, Star Island, December 31, 1927 (5152), in which he says:

"The Midland application was presented in Washington on yesterday, and it is in all the papers now. I notice that in their application, a copy of which we got today, that in their preamble they say the price was Two Million, Two Hundred *Twenty-five Thousand*, and the copy of the contract you signed with them was Two Million Two Hundred Fifty Thousand Dollars, a difference of Twenty-five Thousand Dollars. * * *

I am enclosing you another proxy for our meeting on the 10th and if you have time I would appreciate it if you would sign it. You did not write me anything about the poll tax matter. I have until January 31st to pay this, and I am awaiting your instructions. If I can ever serve you in any way send for me at any time" (5153-54).

No. 234, letter from Green to said Allen January 6, 1928 (5155), reading:

"Replying to your letter of December 31st, in regard to an apparent error in the price stated in the application to the Interstate Commerce Commission, beg to say that I have called the attention of our attorney to the matter and he will doubtless straighten the matter out.

In regard to the poll tax matter, I would be glad to have you take care of it as you have in the past.

Everything is beautiful here, but the cold weather of the past week or so has stiffened me up considerably; however, I believe I shall soon bake out here" (5156).

No. 238, telegram from Green to Charles W. Pierson May 10, 1928 (5158), reading:

"Southern Pacific has requested my legal residence address for next year in order to qualify as a Director of their Lines in Texas and also as President and Director of the Texas Midland. Do you see any reason why I cannot claim Terrell Texas as still my legal residence address" (5159).

No. 239, telegram from Pierson to Green May 11, 1928 (5159-60), reading:

"Your telegram tenth See no reason why you cannot still claim Terrell Texas as legal residence" (5160).

No. 258, letter to Green, Round Hills House, from Charles W. Pierson, December 5, 1928 (5161-62), advising him of the necessary steps for the liquidation of the Westminster Company and the incorporation of Green Estate, Incorporated.

No. 261, letter from W. P. Allen to Green January 18, 1929 (5164), reading:

"In the absence of any contrary instructions from you, I have paid the Poll Tax receipts as usual and herewith enclose them to you" (5165).

No. 262, letter to said Allen from Green, January 21, 1929 (5166-7), reading:

"I am in receipt of your letter of January 18th, enclosing poll tax receipts, and I thank you very much for attending to the matter for me.

I think you did a pretty good job when you got rid of the Texas Short Line for $175,000.00, and hope you will now ease down a little and take things more tranquilly. I hope you and Mr. Gill, with your wives, will be able to take the trip to Florida in your automobile and if you do we shall, of course, expect to see you at Star Island" (5167).

No. 283, letter from said Allen to Green, Star Island, April 24, 1930 (5169), reading:

"I have not heard from you in a long long time and have been hoping that you would decide to spend a month at Marlin this year but from what I can hear, I am afraid that you are not coming.

I saw McDonnough the other day and he told me of his visit with you and I was sorry to hear that you had not been feeling well.

I presume by the time this letter reaches you that you will be getting ready to start North again" (5170).

No. 285, letter from Walter H. Marshall to said Allen, May 1, 1930 (5171), enclosing Green's check for $5.50 in payment of State, County and City poll taxes for himself and Mrs. Green.

No. 286, letter from Charles W. Pierson to Green, Star Island, May 6, 1930 (5173), reading:

"I have your note of May 3rd and shall be glad to confer with you on your arrival in New York.

A letter received this morning from the Reverend Currier contains a lot of additional newspaper clippings and gives an interesting bit of information which he says was gained in a secret and confidential way and is not yet public.

It seems that the Listers consulted an eminent Vermont lawyer and have been advised that if they list the Estate for any sum the Town will have to pay the State tax on the amount, whether it is collected or not. As failure to collect would bankrupt the Town, the information is that they are not going to list it.

If this information turns out to be accurate I should feel considerably relieved, because it would be difficult to contest an assessment without entering an appearance in Vermont and submitting to the jurisdiction, and that is to be avoided, if possible" (5173-74).

No. 287, letter from John M. Bullard, of Crapo, Clifford, Prescott & Bullard, New Bedford, Massachusetts, to Green, New York City, May 29, 1930 (5175), reading:

"You told me last summer that if any change in the tax law in Massachusetts came to my attention that you wished I would report it to you. The General Tax Revision bill has fallen through but there was passed, a little less than a year ago, a statute ruling out the word June 30th. This can in no way benefit you and might hurt you but as that date has been a magic date with you I thought you might like to know of the change and perhaps come to Round Hill earlier. I enclose the old statute and the new for your information" (5176).

No. 288, letter to Green, Sherry-Netherland Hotel, New York City, June 10, 1930, from Charles W. Pierson (5178), reading:

"While I am not an expert on Massachusetts law, I have made some examination of the recent amending statute (Section 2 of Chapter 361 of the Acts of 1929, approved May 31, 1929) and the Massachusetts decisions involving the meaning of the word 'inhabitant', and see no reason why you should not go to Round Hill in June rather than July.

Under the present statute I cannot see that this would affect your position one way or the other in case an attempt were made to classify you as an inhabitant of Massachusetts for purposes of taxation" (5178-79).

No. 304½, letter to Green from Charles W. Pierson, February 10, 1931 (5218), reading:

"I have been giving a great deal of consideration to this question and am writing you at this time as I am planning to spend the next few weeks in Bermuda.

In case it becomes certain that Texas is to enact an income tax law oppressive to large estates I think that on the whole you would be better off as a resident of Florida taxable in Texas only on income from property and business in the State. A burdensome income tax law was introduced in the Texas Legislature on January 28 or thereabouts. I have been unable as yet to get any very definite information as to its chances of becoming law or when it would probably take effect if enacted, though my latest advices were that it is not likely to go through at any very early date. The Legislature, I think, sits for one hundred and twenty days' regular session, or through April.

In law a change of legal residence involves two elements: first, actual presence in the new domicile, and second, intent to make the change. As you are actually living in Florida you are in a position to make the change of legal residence by simply making up your mind to do so—forming the intent. The important thing would be to be able to prove the intent and when it was formed.

One way of showing intent would be by registering as a voter in Florida; another would be by making returns and paying taxes (including poll tax) as a resident of Florida. These things would, however, involve some delay and should be supplemented if possible by evidence showing that the intent was definitely formed before the Texas income tax law went into effect. For this purpose I would suggest that you arrange to be advised by telegram as soon as any income tax law passes the Texas Legislature or becomes certain of passage and before it goes to the Governor for signature, and that you thereupon instantly—

Write a letter to your office here stating that you have changed your legal residence to Florida and directing that future tax returns and other papers be drawn accordingly;

Write a letter to the Texas Midland or to the offices of the Southern Pacific in Texas stating that you have changed your legal residence to Florida and instructing that their records and future publications be amended accordingly.

If you are listed as an officer or director in other Texas corporations or organizations it would be well to write similar letters to them.

Of course these are merely suggestions for your consideration in case you decide to make the change" (5218-20).

No. 327, letter from W. K. Potter to Charles W. Pierson, October 5, 1932 (5179-80), reading:

"I am in receipt of the enclosed form from Mr. Green this morning, from which you will note that the Department of Taxes and Assessments of the City of New York, has registered him as a non-resident for the year 1933 at $5,-000.00.

Mr. Green requests that I turn this over to you for your attention" (5180).

No. 308, letter from John M. Bullard, New Bedford, Massachusetts, April 22, 1931, to W. H. Marshall, Star Island (5182), reading:

"I have received the Dartmouth tax form which Colonel Green asked you to send me. It is the practice of the assessors to send these to all owners of property in Dartmouth every year. Nothing is required with regard to the real estate although the blank, for some reason or other, contains statements about it. The assessors like to have the form filled out covering the personal property. However, if they receive no list, they proceed to 'doom' the personal property, that is assess it for any sum that they see fit. If they assess it too high and no list has been filed, the taxpayer has no recourse. However, their regular course is to assess it for considerably less than ordinarily would be the right value to return it at. If the Colonel has been filing no list in the past, as I am inclined to think has been the case, I should not advise him to file a return this year unless he noticed a jump on the assessed value of his personal property last year, which he considered unreasonable. This personal matter has nothing to do with the Radio Corporation or Whaling Enshrined, which we handle in another blank which is filable in June. If the blank were filed, it should give the value of all household furniture and all other tangible personal prop-

erty owned by the Colonel and located in Dartmouth on April 1 with the exception of automobiles. The tax would be assessed at somewhere around $30. a thousand on the value returned. I shall do nothing further about the return unless I hear further from you" (5183-84).

No. 328, letter from W. K. Potter to Charles W. Pierson, October 6, 1932, enclosing assessment notice against Mabel E. Green in the amount of $5,000 (5184).

No. 329, letter from Pierson, October 14, 1932, to Green, Round Hills, Massachusetts (5186), reading:

"Mr. Potter has handed me for attention the notices of assessment against you and Mrs. Green as non-residents for New York personal tax for the year 1933.

Before deciding what had better be done I should like to know what, if any, personal property (other than cash, bank accounts, and securities which are not taxable) you and Mrs. Green or either of you are keeping within the State of New York, also what, if any, insurance you carry on any personal property in this State.

The assessments are for only $5,000 apiece, which would mean a tax of a little over $100, and it may be that the wisest course would be to let them alone and not apply to have them canceled. However, we can tell better about this if you will let me know the facts.

I was sorry to learn a few weeks ago that you had been a little indisposed and trust you are feeling in good shape again" (5187).

No. 330, letter from Green, South Dartmouth, Massachusetts, October 15, 1932, to Charles W. Pierson (5188-9), reading:

"Replying to your letter of October 14th, will say that all I have in the Sherry-Netherland apartment is a stamp collection and the safes in which the collection is kept. To me, this collection is worth more than $5,000.00. All Mrs. Green has in the apartment is a radio set and perhaps some cast-off clothing" (5189).

No. 331, letter from said Pierson to Green, Round Hills, Massachusetts, October 17, 1932 (5190), reading:

"On the facts stated in your letter of the 15th inst. put into affidavit form it would probably be possible to have the assessment against Mrs. Green canceled or reduced.

On the whole, however, we are inclined to advise that nothing be done about either of these small assessments.

Should an attempt be made another year to increase them we will take the matter up again" (5190-91).

No. 334, letter from W. P. Allen, Terrell, Texas, to W. K. Potter, January 28, 1933 (5192), reading:

"For the last several years I have been trying to get the Colonel to move his official residence to the State of Florida, anticipating that we were going to have an Income Tax in Texas, but for some reason he has never done so, and up to now we have had no Income Tax but there is no question but what the Legislature now in session is going to put a drastic Income Tax in Texas and it is going to cost him a lot of money and I am writing him today relative to same and I think it will save him probably two or three hundred thousand if he will change his official residence to Florida where they have no Income or Inheritance Tax and I think his Federal Return this year should be filed in the State of Florida.

Of course, it is none of my business but I think it is my duty to keep him posted on what is going on here and if he realizes what this is going to cost him, not only in Income Tax but our Inheritance Tax is going to be fierce and if after his death he should have to pay Inheritance Tax in Texas, it would probably take a third of his estate.

Of course he will write you about this himself but I think it is urgent" (5192-3).

No. 335, letter from said Allen to Green, Star Island, January, 28, 1933 (5195), reading:

"For the last few years I have been keeping you informed as to the taxation laws in Texas and I have thought for some time it would be best for you to move your official residence to the state of Florida and file your Federal Income Tax Return there.

The present Legislature now in session is going *to pass a very drastic Income Tax Law* and if you file your Federal Income Tax Return in Texas and claim this as your residence, you will have to file State Income Tax Return here also and it may run into large figures.

I believe, much as we appreciate having you as a citizen of this state, that in order to save this large amount of

money each year, to say nothing of Inheritance Tax, that you should change your residence to the state of Florida where they have no Income or Inheritance Tax" (5195-6).

No. 336, letter from W. K. Potter to Charles W. Pierson, January 31, 1933 (5197), reading:

"Enclosed please find for your information, letter I received today from Mr. W. P. Allen, in connection with the proposed tax measures which he thinks they will enact during the present session of the Texas Legislature" (5198).

No. 337, letter from Green to said Allen, February 14, 1933 (5199), reading:

"In connection with your letter regarding a proposed change in my legal residence from Texas to Florida, I enclose herewith copy of a letter I have just received from Mr. Charles W. Pierson, my attorney in New York.

If, as suggested by Mr. Pierson, you will keep me posted by telegraph of the progress of the proposed income tax legislation in Texas I shall be very much obliged to you" (5199).

No. 339, letter from Green to J. H. Lummus, Assessor, Miami, Florida, March 31, 1933, enclosing tax return blank for the year 1933 on the same basis as previous year, in which he says (5200):

"In regard to the intangible personal tax return, will say I have been advised that inasmuch as my legal residence is in another state, I am not required to make this return for Dade County. If my understanding is not correct, I would thank you to so advise me" (5201).

No. 340, acknowledgment to Green from said Lummus, April 3, 1933 (5202), reading:

"I wish to acknowledge receipt of yours of March 31st, enclosing tangible personal return on the same basis as last year, which is satisfactory to the writer, and you will be assessed accordingly.

However, under our law, inasmuch as you are not a citizen of this State, you would not be subject to the intangible tax except, on bank stocks, as bank stocks are assessible only at the location of the bank and therefore I will assess against you the stock owned on the basis that we have ac-

cepted from the bank as a fair value of the stock. It is, therefore, unnecessary for you to file an intangible return unless you care to do so" (5202-3).

No. 354, letter from W. P. Allen to Green, South Dartmouth, Massachusetts, October 17, 1935 (5205), reading:

"The New Deal administration, most of which I do not approve of but some of it I do, reminds me that you resemble Roosevelt very much in one respect. When you were riding up and down the Midland in your private car and lived here in Terrell you were always for the under dog and the humblest paddy on that line could get your ear quicker than the officials of the railroad. In this respect you resemble the President. Where you don't resemble him is that in the last tax bill written they make it mandatory upon you not only to take practically all you make but they tell you how to write your will and leave about ninety-eight per cent of it to the Government. However, don't forget that the Republicans were nearly as bad as the Democrats because they boosted this rate themselves away up yonder. You know I have been trying to get you for several years to change your residence to Florida but never did have any luck. We have a bad inheritance tax law in Texas which, added to the Government's, will just about wipe your estate off the map. In addition to all this, we have recently voted an old age pension law which is going to take some twenty-five millions of dollars to pay and the legislature is now in session and there is no doubt in my mind but what they are going to pass an income tax law, as the Governor is against a sales tax which I am for. I don't see how any of us are going to make very much money hereafter and all I am trying to do is to keep what I have" (5206-7).

Thereupon counsel for Massachusetts gave in evidence the following Exhibits relating to miscellaneous matters:

No. 67–1/4–A, letter to Benson and Hedges, New York City, and signed by Walter Marshall, August 14, 1910, stating, "Mr. Green requests that in future you do not send cigarettes to him at Dallas, Texas, as he is now located in New York" (5221). No. 67–1/4–B, statement of account of Benson and Hedges, August 1, 1910 (5223).

No. 67–1/2, telegram, August 16, 1910, to F. B. McKay, Terrell, Texas (relating to McKay's testimony R. p. 824),

in which Green says, "I see no chance in near future for change in management of Midland Road" (5225).

No. 69–1/2, letter from Green to Gielow & Orr, New York City, September 4, 1917, in which he says, "I have just returned from a trip to Buzzard's Bay,—we are going to lay in the harbor for one week," and calling attention to certain things in the boat that needed correction and enclosing check for $20,000 in payment of bill (5226-7).

No. 72, letter from Green, March 22, 1918, to New Bedford Gas & Edison Light Co., authorizing construction of line from Salter's Point to buildings on Round Hills Farm (5228-9).

No. 74, letter from Green to Editor of The Rudder, May 23, 1918, in which he says:

"Replying to your favor of May 11th, I beg to advise that it has not been our intention to drop our subscription to The Rudder. The delay in renewing has been due to the fact that the yacht United States is tied up at my country place, The Round Hills Farm, South Dartmouth, Mass., and it has not been decided at what point mail intended for it should be addressed. We expect to be there June 15th and as soon as the proper address is decided upon, our renewal for The Rudder will go forward along with subscriptions for other magazines and papers for which we intend to subscribe" (5231).

No. 77, letter from Green to Mr. Pierce, United States Fuel Administration, Boston, October 28, 1918, regarding the "United States" (5234), reading:

"I am the owner of the Yacht United States, which is about 265 feet in length, with 41 foot beam and four decks. This yacht was built by me before the war started. I am also the owner of the farm known as the Round Hills Farm, South Dartmouth, Mass., off which the yacht laid all summer.

The yacht cost in the neighborhood of one million dollars; she has a great deal of inlay and stucco work; has all modern plumbing, and, unfortunately, has the vacuum system of heating. * * *

I hope some time to make Massachusetts my home, and I don't want to be compelled to take the boat south, as I would like to have it remain in Massachusetts waters for next summer, should peace prevail. If not, we have pur-

chased a wharf at Padenarm for the purpose of tying her up until after the war is over, and the only coal needed is to keep the temperature between 36 and 40 degrees.

* * * * * * *

An immediate decision will be very much appreciated by me, and as I am leaving for Texas today, I would request that you direct your reply to 111 Broadway, New York City, instead of South Dartmouth, as my office will be kept advised at all times of my route" (5235-6-7).

No. 87, invitation to Green to attend the Nonquitt Casino and tennis courts, June 28, 1919 (5238-9). No. 87–A, statement of subscription rates (5239-40). No. 88, letter from Green acknowledging same and subscribing for the season 1919 but regretting inability to attend July 4th because they were giving their employees a dance at the wharf and they had promised to be spectators (5241-43).

No. 86, letter from Green to Oliver Prescott, New Bedford, June 28, 1919, regarding removal of stone wall and erection of fence to keep out intruders, in which he says:

"I am really sorry we have to go to this extreme, but am spending several thousand dollars for plants trying to beautify the place. It is principally the servants of the summer people at Salter's Point and Nonquitt that are doing the damage. Our intention is to make the place somewhat of a show place, and am growing plants of nearly every known variety.

I will arrive after the 2nd of July at South Dartmouth, and my address will then be South Dartmouth Postoffice" (5248).

No. 89, letter from Marshall to M. H. Walsh, Rose Specialist, Woods Hole, Massachusetts, September 18, 1919, ordering 2,000 Rambler Roses for Round Hills (5249-50).

No. 90, Walsh's acknowledgment of the order, September 20, 1919 (5251).

No. 112, telegram from Green to Gerda Larsen, Waldorf-Astoria, New York City, November 4, 1921, reading, "Will arrive with my bad knee six thirty P. M. Saturday" (5253).

No. 117, letter from Green to Oliver Prescott, New Bedford, June 9, 1922, requesting him to form the Round Hills

Radio Corporation for broadcasting station at Round Hills, to own the apparatus, buildings, etc., and stating:

"As I shall not be able to go to New Bedford or South Dartmouth before July 1st, I wish you would please send all communications to 111 Broadway" (5256-8).

No. 121, letter dated June 17, 1922, from Green at the Waldorf-Astoria to the Hancock Electric Company, Dallas, Texas, regarding the purchase of a loud speaker to be delivered to the Adolphus Hotel "with the understanding that if I returned it to you it would be re-packed and shipped to me at my residence in South Dartmouth, Mass." and directing same to be forwarded to the Round Hills Farm by express (5259-60).

No. 122, letter from Green, June 26, 1922, to Newson and Company, Publishers, New York City, reading:

"Our radio broadcasting station which is now being installed at Round Hills Farm, South Dartmouth, Mass. will be ready for operation on July 15th. In addition to our regular concerts, lectures, etc., it is our desire to broadcast bedtime stories for the benefit of the children. Would there be any objection to our using for that purpose a book entitled 'Folk Lore From Foreign Lands,' by Catherine T. Bryce, published by you? The stories will, of course, be read by an accomplished elocutionist or reader, and your firm will be given due credit in the announcement and also in the program published in the daily papers" (5261-2).

No. 123, letter dated June 28, 1922, from Green to B. R. Duff, South Dartmouth, stating:

"We are due to arrive New Bedford on the train reaching there at 7:42 A. M., railroad time, July 1st. We will probably have baggage enough for one of the big farm trucks" (5263).

No. 125, letter from Green to G. N. Chase, Broadcasting Sales Engineer, Western Electric Company, August 30, 1922, regarding unsatisfactory broadcasting horn on the water tower, in which he states:

"My principal object in installing this Public Address System was that I might be able to entertain my friends going down on the Bedford Boat" (5265-66).

No. 126, letter from Green, September 4, 1922, to "Dorothy" (Marshall, daughter of his secretary), advising her to go to school in the East instead of the South (5269-71).

No. 127, letter from Green to E. B. Craft, of the Western Electric Company, September 15, 1922, congratulating him on the successful installation of the radio station for the Round Hills Radio Corporation, etc., and stating that about October 1st the 500 Watt Station would be ready for installation, and

"In this connection, I beg to advise you that I have never had anything please me more than the operation of this 100 Watt Station, especially so when we were advised by mail that we had been clearly received as far north as Prince Edward's Island and as far south as Norfolk, Va. * * * Since the 100 Watt Station was declared ready for operation, we have been broadcasting continuously, without interruption" (5273-5).

No. 129, letter from Green, President of the Round Hills Radio Corporation, to the Wireless Specialty Apparatus Company, December 16, 1922, giving dimensions of buildings, etc., for installation of wireless, in which he says:

"Unfortunately for me, I am expecting to get away tomorrow on a trip south, to see if I cannot boil out the little Rheumatism that is left in me" (5276-8).

No. 148, letter from Green, June 30, 1924, to the Economist Stamp Company, New York City, stating:

"I am in receipt of yours of June 28th and can see no reason why you should send the celluloid pockets to Southampton, as I have never resided there and have no intention of doing so.

* * * For your information, I will state that ever since the Pilgrims my address has been as follows: E. H. R. Green, Round Hills Farm, South Dartmouth, Mass" (5279-80).

No. 154, letter from Green, October 13, 1924, to the Treasurer of The E. Howard Clock Company, reading:

"I was very glad to receive your letter of October 10th. The old Howard Regulator, purchased from you a number of years ago, is still in my possession and I had it shipped

from Texas to my home here in South Dartmouth. As I remember, this particular clock was on exhibit at the Centennial in Philadelphia in 1876, and if there is any authentic history connected it, I should like to give it a place in a sort of a museum I am establishing here in connection with the 'Charles W. Morgan.' I would be glad to have you advise me" (5282).

No. 172, letter from "WHM", South Dartmouth, November 13, 1924, addressed to "Mrs. Lee", reading:

"I enclose herewith Dartmouth tax receipts for the year 1924. I suppose your file is the proper place for them.

I fully expect to be here until about Christmas, as the Colonel has just bought a closed electric car for his own use on the place. It will be heated, of course, and he can be *perfectly comfortable* running around the place in it. Goody, Goody, Goody !!!" (5283).

No. 191½ letter from Green, Star Island, to Mr. Coke, Dallas, Texas, February 4, 1925, regarding real estate investments in Dallas and stating:

"After going thoroughly over my mother's history, in connection with about two thousand pieces of property she owned, I have concluded that real estate is the poorest investment a person can have. On one or two pieces we made a great deal of money, but in cheap localities, such as the location of the Dallas Amusement Company, the sooner it is disposed of the better off everybody will be. No property of that nature will steadily improve at the rate of 8% a year.

* * * * * * *

My experience has been that if you own property in three or four different parts of a city, you may make something on one piece, but on the balance you will lose. You must remember that on Commerce Street property the cream has already been raked off. In my opinion a miracle will have to strike Dallas if money is to be made on real estate that is kept any length of time. Out of seven or eight pieces of property in Dallas Henry Hamilton and I owned and which we sold before I left there I do not believe there is one but what could be bought today for within one or two per cent of what we sold for. My mother's motto was 'Property should not be owned except for a residence or

place of business.' However, I am willing to do anything that the rest of you want to do" (5287-8).

No. 194, letter from Green, Star Island, April 2, 1925, to "Eugenia" (Corley, of Terrell, Texas) asking if she wants "to be one of Uncle Ned's little girls at Wellesley—I am now making out my budget of expenses for the coming year for the other young ladies" (5291), and stating his requirements if she accepts (5290-91). No. 211, letter from Green to John H. Levi, Miami Beach, October 26, 1926 reading:

"I am very glad to hear your report on Star Island, and we are going to do everything in our power to get our house back into shape for our friends during the coming winter season.

I note what you say about the tile roofs coming off. If you have any suggestions to make, it will give me pleasure to follow them in this connection. I have had much experience with tile at my home here at South Dartmouth and I would be glad to know what can be done in Florida.

* * * * * * *

If there is anything I can do toward helping Miami Beach get on her feet again, let me know and I shall be glad to help put it over" (5294-96).

No. 222, telegram, June 8, 1927, from Green to Harry Neyland, New Bedford, reading:

"Please extend to the Town of Dartmouth and its citizens my hearty congratulations on the anniversary of its birthday. Kindly welcome all the people who are perpetuating and continuing the memory of our good old town and extend to them for me a hearty handshake, which I regret exceedingly it is impossible for me to deliver in person. I also extend my congratulations to the winner of the flag prize" (5296-7).

No. 225, letter dated July 30, 1927, from Green to Mrs. Frederick H. Brooke, Nonquitt, Massachusetts, explaining his plans for Round Hills and giving assurances regarding the operation of the proposed airport there (Testimony of W. M. Marshall shows that he composed this letter) (5303-9).

No. 236, telegram from The Standard, New Bedford, to Green, Star Island, April 23, 1928, reading:

"Newspaper dispatches say you will spend Summer at Star Island. Please wire us if you are to be at Round Hills as usual this Summer"

and No. 237, Green's reply to The Standard, April 23, 1928, reading:

"Round Hills July first, Deo volente" (5310-11).

No. 257, letter from Green to the New York American, Circulation Department, New York City, December 4, 1928, renewing subscription and stating:

"The papers should be sent as follows: From Dec. 15th, 1928, to June 15th, 1929, E. H. R. Green, 46 Star Island, Miami Beach, Florida; from June 15th, 1929, to Dec. 15th, 1929, E. H. R. Green, Round Hills House, South Dartmouth, Mass" (5313-14).

No. 278, letter to Green, Star Island, January 27, 1930, from Martin Dunn, transmitting certain questions as a basis for an interview, and No. 279, Green's reply, January 31, 1930, reading:

"I have carefully read the questions you have asked me and have answered them to the best of my ability" (5315-17).

No. 317, letter from Green, February 6, 1932, to L. W. Rogers, Miami, reading:

"I am in receipt of your letter of February 5th, requesting permission to place my name in nomination for a Governorship and the Presidency of the Dade County Humane Society and, in reply, will say that while I keenly appreciate the honor you desire to confer upon me, on account of my physical condition and the fact that I am a resident of Dade County for only a few months during the year, I am forced to decline" (5318-19).

No. 332, letter from Green, November 8, 1932, to O. P. Austin, National Geographic Society, Washington, request-

ing a life membership and enclosing his check for $100, stating:

"My permanent address for your records should be as follows: E. H. R. Green, Round Hill House, South Dartmouth, Mass." (5319-20).

No. 341, letter from F. R. Warburton, of Graybar Electric Company, Inc., to Green, January 8, 1934, regarding certain stamps, and Green's reply thereto, No. 342, January 10, 1934, in which he says:

"I am returning the photostats herewith and beg to say that on account of the trouble in connection with a stamp collection and my interest in other business, I have given up stamps entirely and my only hobby now is coins" (5321-25).

No. 344, bill dated September 18, 1934, to Green for 71 jig saw puzzles (5325).

No. 353, letter from Green to Lee Schwartz, New Bedford, August 1, 1935, reading:

"Replying to your letter of July 31st, I beg to advise that the designation 'Round Hills' was given to this estate by the Federal Government when the lighthouse was built, which, I think, was around 1828. We have always stuck to that name and it has never been used in connection with any outside commercial enterprise; therefore, I regret that I am unable to comply with your request" (5328).

No. 312, letter dated August 1, 1931, from Harry T. Wilson, General Secretary, The American Numismatic Association, to Green, Round Hills, acknowledging receipt of his dues for 1932 and two subscriptions to The Numismatist the magazine to be mailed to Round Hills and Star Island, stating they had the address, Sherry-Netherland Hotel, New York City, on their records, and No. 313, reply from Green to said Wilson, August 5, 1931, stating:

"I am in receipt of your letter of August 1st and, in reply, beg to advise that my address at the Sherry-Netherland, New York City, is only temporary and is used only for a short time between my summers in Massachusetts and winters in Florida. The two addresses given you are correct, etc." (5330-33).

WALTER H. MARSHALL, New York City, testified that he had been private secretary to Green until the date of his death and entered his employment May, 1910, at Dallas, Texas; that he had been secretary to the President of the National Exchange Bank in Dallas, of which Green was a Director, and met Green in the President's office; after leaving the Bank, he was secretary to railroad officials in St. Louis and Mexico City (5334-5); he returned to Dallas and was employed by the Kansas City Southern as Freight Agent and Green sent for him and asked him if he would like to go to New York as his secretary; he left Texas with Green, but without his family, for New York about July 21, 1910, went to the Waldorf-Astoria and made that their stopping place; Green had a suite of rooms and witness was with him in the Hotel for several months; Green conducted his business there and had no office staff other than witness; they returned to Texas in November (5336-38). After examining Tex. Exs. Nos. 20, 21 and 22, November 10 to 14, 1910, witness stated he was then with Green and wrote his acknowledgment, Ex. No. 21 (5340); he and Green returned to New York and came back to Texas for the Governor's inauguration, at which Green was present in his regalia (5341).

Witness identified Tex. Ex. No. 26, January 7, 1911, photograph taken at the Fair Grounds at Dallas, Texas (5342); also photograph of Governor Colquitt and his personal staff; that Green had this photograph tinted in colors and kept it at Round Hills and was considerably attached to it. The same was given in evidence as Mass. Ex. No. 398 (5343).

The witness further testified that Green returned to New York and was there until May, 1911, when he went back to Texas, attended a meeting of the Texas Midland Railroad and remained three or four weeks, then went back to New York and moved into 5 West Ninetieth Street (5345-6); that Tex. Ex. No. 57, a deed from Green of property on Commerce Street, Dallas, executed in New York City September 26, 1911, confirms his recollection that at that time Green disposed of his Commerce Street house (5346); that during the remainder of the years 1911 and 1912 Green resided at 5 West Ninetieth Street, where Miss Harlow joined him; witness brought up his family in the Fall of 1910; in 1912 and 1913, they were in Texas for the annual meeting of the Railroad for three or four weeks (5347-8);

in 1913, witness resigned because he did not get along with Mrs. Hetty Green and returned to Green's employment at the latter's request, about July 15, 1916, after her death (5349); he assisted in the moving of his office to 111 Broadway, New York City; from the Summer of 1916 and through the years 1917, 1918, and 1919, Green continued to take those periodical trips to Texas in the Spring and Fall, of the same approximate duration (5351); that witness left him again in November, 1919; that during this period Green's health seemed to be very good, he would come to the office, remain a few hours, dispose of their business, attend Directors' meeting or go to a baseball game; during this period he lived at the Waldorf-Astoria; after his mother's death, he purchased the yacht "United States" and had it sent by the Great Lakes and St. Lawrence to New York, where it was cut in two and about 50 feet added to the middle, making the biggest yacht in the world (5352-4); that he was present at Green's wedding at Highland Park, Illinois, July 9, 1917, and went with Green to Round Hills in 1916 or 1917 to look over the place with Z. B. Davis, of New Bedford (5354-5); Green was looking for a spring which he said he knew was there as he remembered it from his boyhood days when he used to go down there; they walked all over the place trying to find the spring which they eventually did; Green outlined to Davis what he had in mind and the houses he wanted to build for employees, etc., and said he was going to build his home there; his idea at first was to build his home close to the beach and for some reason changed his mind and built it up on the hill where it is today; that from his talks with Green he knew this was on property that belonged to his mother; Green said he was going to develop the place (5355-6); that on another occasion they met Gideon Howland, a relative of Green, in his house on Smith Neck Road—the house is there today (5360); witness was with Green at the Adolphus Hotel, Dallas, Texas, when he had his illness; he had joined him there in October, 1921, and was continuously in his service until August, 1925, when, at Green's direction, he went to Marlin, Texas, for his health (5362); he returned to Green's service in January, 1926, and continued with him until his death at Lake Placid (5363); when first employed by Green in 1910, he received instructions from him to always describe him as of Terrell, Kaufman County, Texas,—these

instructions were never changed (5363); after Green came to New York in 1911, he never told witness that he intended to return to Texas to live or intended to build a house in Texas, nor did he say why he claimed Terrell, Texas, as his residence (5364); he told witness he could not go to Round Hills before July 1st on account of taxes; he said he could not stay in Massachusetts more than six months because of taxes and when the time was getting rather close, witness would remind him that they had better get out and Green would say, "All right, we will get out; we will get away from here all right" and witness would say, "Well, I had better be ordering the private car", to which Green would reply, "We will get that in plenty of time"; these conversations occurred usually every year when they were staying at South Dartmouth until December (5364-5-6); that Green always seemed very anxious to get to Round Hills again (5366); and for some time before going there, he would be getting ready to leave; he never said anything to witness or in his presence regarding the ultimate disposition of the Round Hills House after he had ceased to use it as a residence and never heard him talk of moving out of it, nor did he ever say what use he anticipated would be made of the house after his death (5367); Green did not care for social life; he did not want people coming around him (5367); he had the "Isola Stella" built and wanted it named for Star Island and asked witness to find some Italian who would give him the name "Star Island" in Italian and witness did so (5368); referring to "Gooseneck Bill" McDonald's testimony (R. 539), witness denied that he had any telephone communication with him in 1928 or at any other time (5373); that witness never drew a check to said McDonald (5379); he further testified that 26 servants were kept in the Round Hills House and there were 81 employees on the estate as a whole, including those in the house; there was a steward, butler, first and second footman, chauffeur with helpers, cook help's cook and help's cook helpers, utility man, gardeners, house engineers, night watchman, bus driver, laundry man, ladies' maid, chambermaids, pantry and parlor maids, painter, carpenter and office manager and two trained nurses, Mrs. Green's personal maid and her chauffeur (5380-1); at the airport, there was a superintendent and assistants; there were always two or three there; on the farm, there were 40 or 50 farm hands; there were in all 256 acres (5382); the usual cus-

tom was to leave Round Hills for New York and while there the servants would close the Round Hills house and the steward would take them down on the Clyde or Mallory Lines; some would come in their own cars; they would open the Star Island house and in the interim Green would be in New York; six or seven servants would be left at Round Hills and fifteen or sixteen taken to Miami; Round Hills was kept heated during the Winter; five or six of the employees lived in the house and the others went to town at night; Round Hills was never closed except so far as appearance went; they boarded up the windows but kept the house heated and a skeleton force there throughout the Winter; none of the servants went to the Waldorf-Astoria or Sherry-Netherland in New York, or to Marlin, Texas (5383-4); they took with them baggage consisting of Green's and Mrs. Green's personal trunks and the trunks of the nurse and the witness but did not take any stamp collections; later, when he became interested in numismatics, he took those with him (5385-6).

Witness identified Mass. Ex. No. 342, a letter from Green to Warburton, January 10, 1934, in which he said he had "given up stamps entirely", as a letter he had written and stated that this was the fact; at that time the stamp collection was in New York at the Sherry-Netherland Hotel (5387); in the last year or two of his life, Green took up a stamp collection of another kind through a dealer in Miami, Mr. Neuman, a collection of twentieth century stamps (5387-8); that he had some of his numismatic collection at South Dartmouth but witness cannot say whether he carried any stamps (5388-9); that Ruth Lawrence was a ward of Green who went to St. Mary's at Peekskill and afterwards to Wellesley, she spent the Summers at Round Hills; Green gave her an automobile; she graduated from Wellesley in 1925; that Green bought securities through her husband, Stewart Briggs, of Fairhaven, opposite New Bedford; that Jennie Turpaud was a French orphan and Green sponsored her education at the Wilkes-Barre Institute (5390); Rose LaMontague was a maid in the Waldorf-Astoria, a French-Canadian, for whom Green paid for a business course; Dorothy Marshall was witness' daughter, she was on the "United States" with Ruth Lawrence and Dana North in 1918; Green sponsored her education; she attended high school at Chevy Chase, outside of Washington, for two years, then returned to New York and took

special courses at Columbia for a year and afterwards a course in kindergarten work with the Froevel League; she was a frequent visitor at Round Hills and was married in 1926 (5390-2); she married Dr. Thomas B. Glass, a member of the Buie Clinic; Dana North was a friend of Ruth Lawrence, and Prudence Corley was the daughter of Thomas E. Corley, Treasurer of the Texas Midland Railroad; Green sent her to Wellesley College; she frequently visited Round Hills in the Summer and was married in June, 1929; Eugenia Corley was her sister; she went to Randolph-Macon and afterwards to Wellesley, at the Colonel's expense, and was a frequent visitor at Round Hills; Frances Cammack was a cousin of Mrs. Stafford and was sent by Colonel Green to the Hoc-A-Day School at Dallas to prepare for Wellesley College, but later went to Walnut Hill, Massachusetts; she attended school until 1933 and was a frequent visitor at Round Hills; Margaret McElroy was a cousin of Mrs. Green from Providence, Rhode Island; Green sent her to the Morgan School in Dallas; she went to several camps and schools, some of which were in New England; she entered Wheaton College at Norton, Massachusetts, but did not graduate; she frequently visited Round Hills (5392-96); Eileen Stephenson was a little girl the Colonel saw in New Bedford, took an interest in and started to educate; he sent her to the School in the Pines, Massachusetts, and she went to the Boston University for two years and was there at the time of his death; she was the last of the young ladies he tried to educate; during the last few years Eileen Stephenson would come to Round Hills in the Summer and stay all Summer; Virginia Ware was a sister of Mrs. Ben Hodges and visited at Star Island; Jeanice Hodges was a daughter of Mr. and Mrs. Ben Hodges, formerly of Terrell, Texas; she visited Round Hills and Colonel Green had her educated at New Bedford and sent her to school in Miami; Laura Fernandes was his numismatic clerk, formerly of New Bedford, who died of tuberculosis (5398-9); that Green kept up a pretty voluminous correspondence with these girls and teachers of the schools where they were; that he would get their report cards, look over them and tell witness to write them a letter; Ruth Lawrence was the only one who graduated from any college; some of them spent a part of their vacations visiting the Greens at Round Hills; they would be invited up and their expenses paid during the vacation sea-

son (5399-5400); that aside from these girls, Green entertained very little.

Dr. Stratton, President of the Massachusetts Institute of Technology, called on Green occasionally at Round Hills, both before and after the experimental work of the Institute; Green was very much interested in this work and agreed with Dr. Stratton to pay $20,000 a year (5401); that he opened his estate at Round Hills to the public and they came in large numbers; in the early years, he liked to go down to the beach, about a half or three-quarters of a mile from the house, park his car and the people who knew him would come around and talk and on Sunday he might stay there for hours talking to people who were interested in what he was doing; he would park his car at the ramp, about 150 or 200 feet from the "Charles W. Morgan," and could see the people going into the "Morgan." Counsel for Massachusetts then gave in evidence Mass. Ex. No. 373, a table of the visitors to the "Charles W. Morgan" from May 7, 1925 to July, 1935, showing a total of 1,275,923 visitors; in December, January and February, the number of visitors dropped to a few hundred (5405-6); that the "Morgan" was open to the public the entire year from May 1 to November 1; visitors were allowed to go on it in the months of December, January and February but there was only a watchman there; during the other months there was an entire crew, consisting of a captain, a mate and nine sailors, paid by Green; admission was free (5407).

Witness then identified the following photographs of Green and other persons at Round Hills, which were given in evidence as Mass. Exs. Nos. 399, 400, 401 and 402 (containing the inscription W M A F—The Voice From Way Down East), No. 403 (the Blimp of the Goodyear Company showing the name "Mayflower"), No. 404 (a picture of the "Charles W. Morgan" with a great many flags representing different owners of whaling vessels which Green had had made from descriptions he obtained and which were distributed on his birthday, July 21st, of each year), No. 405 (a picture of the blacksmith shop for forging of implements for whaling which Green had transported from New Bedford to Round Hills), Nos. 406, 407 and 408 (miscellaneous photographs of various persons at Round Hills) (5409-23).

On cross-examination by counsel for Texas, witness testified that at the time Green employed him as his secretary

in Dallas he told him his mother was not well in New York and he had to go to help her with her business and asked if witness was willing to go to New York (5425-6); witness did not take his family because he thought it was temporary service in New York; in May, when he visited Texas, Green attended to his railroad business and in the Fall he would remain long enough to vote in the elections (5427-8); Green was very much interested in Governor Colquitt's election. Witness had read of his intimacy with "Gooseneck Bill" McDonald in the papers but did not know of it personally and never met him until he saw him once in New York (5428-9); the last time Green was in New York to stay over night was 1933—three years before his death (5430); Green was not a traveler in the sense of trying to see the country but witness has been with him in St. Louis, Chicago, San Francisco, New York, Massachusetts and in Dallas, Marlin and Terrell, Texas; was with him in 1921 when he had a severe attack from an old complaint (5432); he was never a well man from that day until he died, could not get around with facility and had to use a wheel chair or lean on some one (5433); witness knew he had pernicious anemia and was with him when he had some of the blood transfusions; the doctor told witness Green had heart trouble (5434); his instructions from Green were that in all legal documents his residence should be shown as Terrell, Kaufman County, Texas; he recalls a certificate for distinguished service to Texas in which his residence was given as South Dartmouth, Massachusetts, and the Colonel sent it back with instructions to change it to Terrell, Kaufman County, Texas; that was about two years before his death (5435) (see Tex. Ex. No. 18-A, January 15, 1935, p. 1042); when traveling around and stopping at hotels, Green would give Terrell, Texas, as his residence; when he was able, he liked to register himself; after he was ill witness registered for him (5436); Green did not spend any money on the old Howland house on the Round Hills estate, he sort of glorified the yard around it (5438); there was an old cemetery near by in which were two of his ancestors and they buried a dog "Beauty" there; he was a great dog lover (5439); witness wrote most of the letters which have been produced in evidence and composed them as well as wrote them; this practice had been going on fifteen years before Green's death (5439).

Witness identified Mass. Ex. No. 225, a letter written to Mrs. Brooke July 30, 1927, relative to the airport and said he wrote every word of it (5440); that when witness and Green visited Round Hills in 1916 or 1917, he could not say whether Green used the word "house," "place," "Summer place" or "Summer home" in describing what he intended to build there (5443); until the Texas Midland Railroad was disposed of, part of his salary was paid him as secretary to the President of that Railroad; Green was very careful about paying his poll taxes in Texas (5444); Green's close friends lived in Dallas and Terrell, Texas—the great majority of them (5445); that heat was kept on in the Round Hills house Winter and Summer because of the dampness (5447-8); that Round Hills is between Nonquitt and Salters Point, where most of the residents are seasonal and not permanent (5449); that he has never known Green to attend any meetings of a club or society of which he was a member.

On cross-examination by counsel for Florida, he testified that he was born in Ohio and went to Dallas, Texas, when about twelve years of age (5454); that he first saw Green when he was sixteen or seventeen years old upon the streets of Dallas (5456); that when he became connected with the Bank, he saw Green every week, almost every day; he was then staying at his Commerce Street house; it was a three-story house with living quarters where he made his home; never saw him at Terrell or elsewhere during this earlier period (5458-9); he was employed by Green in Dallas in 1910 upon the understanding he would go to New York; between May and July, while in Green's service, he was living at the Commerce Street house in Dallas; did not see him in Terrell during this period before they came to New York (5460); they had their office at the Green Floral Company, also on Commerce Street, which was sold by Green about a year later (5460); witness' family came in the Fall of 1910 and it must have been before that that Green indicated the position in New York would be permanent (5462); the meetings of the Railroad Directors were held at Terrell; Green would stay there about three hours and come back to Dallas to the Adolphus Hotel or to the Southland Hotel (5463-4); he did not stay at Terrell overnight and had no living quarters there; that was the uniform rule, and witness never stayed with Green a single night in Terrell and never saw him there prior to 1910; when he went to

vote in Texas, Green stopped in Dallas (5464-5); that at 5 West Ninetieth Street, New York, Green had a regular household establishment where he slept and ate (5466); after his mother's death, he changed his living quarters to the Waldorf; it was about the same year when he talked of going to Round Hills; the house there was started in 1918 and he moved in July 1, 1921; witness has seen a fog bank there for a month at a time (5468-9); that if the heat was not kept on Winter and Summer the water would seep through and discolor the paintings (5470); Green spent a great deal of time and money on the radio station and improvements, but as the years went on—two or three—he lost interest, allowed the licenses to lapse and turned it over to the Massachusetts Institute of Technology, getting rid of it so far as he was concerned; later the students came from the Institute and made use of the laboratories, etc., studying the atom, etc. (5470-1); the Massachusetts Institute of Technology also tried to find some way to get rid of the fog; the whale ship came before that (5472); Green formed a corporation and bought the whale ship and furnished the money for dredging, buildings, etc., that went to make up the museum (5473); he did no farming except for the produce that was used in the house; he had some goats, cows and three or four horses; a small portion of the farm was devoted to that; about 79 acres were used for the airport (5474-5-6); they went to Florida in 1923 and while in Florida, he seemed to be very much pleased with his surroundings; he went out every afternoon in a power boat (5480); that year while cruising he purchased the large house boat "Pioneer" and when he left Miami, went to Jacksonville to pick it up (5482-3); in 1924, he stopped at Jacksonville and went down in the "Colonel," a very large house boat—one of the largest there—to Miami (5486); that year the Colonel was out every day in his automobile, seemed to enjoy it and made many friends (5488); he had a "star" for automobile privilege and was a sort of idol of the people; he was proud of the attention he received; he became interested in real estate and finally purchased the property on Star Island, buying three lots with a frontage of about 600 feet on the Bay and began to make plans for his house, the landscaping of the grounds, etc. (5489-90); the house was ready for occupancy in 1925 or 1926; witness was with him there each year and Green was living there when he went to Lake Placid where he died

(5491); the house was considered a show place and one of the finest homes in Miami; he had water in front of his house and a wharf from which he could step into his boats, beautiful drives all around for motoring; the house was under construction more than a year and all of the rugs and furniture came from New York; the rug in the living room was a very beautiful and valuable one (5492); the house was of a Spanish type, reinforced hollow tile, with tile roof (5494).

Witness identified Fla. Ex. No. 7 as a photograph of the Green home, 46 Star Island, and said the trees shown were royal palms which had to be brought there (5494-6); Fla. Ex. No. 8 as a closer view of the same house (5497); Fla. Ex. No. 9 as a photograph of the servants' quarters (5499); Fla. Ex. No. 10 as a photograph of the house taken from the water at Biscayne Bay, showing the dock, etc. (5500-1); Fla. Ex. No. 11 as another view of the house from Biscayne Bay giving a full view of the house and servants' quarters (5502); Fla. Ex. No. 12 as another partial view of the house from the Bay—all of the trees shown were royal and cocoanut palms which were brought there after the Island was built (5504); Fla. Ex. No. 13 as an airplane view of the Island (5505); Fla. Ex. No. 14 as an airplane view from not so high an altitude (5506); Fla. Ex. No. 15 as a photograph of Green seated in his automobile at the entrance to his house—the vine shown is bougainvillea, of which Green was very fond (5507-9); Fla. Ex. No. 16 as another photograph of the residence showing the flower beds and vines (5510) and Fla. Ex. No. 17 as an airplane view of the house, showing the whole of the grounds, a portion of the dock, building for dancing, etc. (5511-12).

Witness further testified that there was nothing there except a high-class private home and that Green chose Star Island after inspecting different properties; that when he bought it, the building of the Star Island Yacht Club was on it and he tore down most of it and used a part of the foundation; he left the living room and built the house around it; that all of the palms, shrubbery and vines were furnished by the Exotic Gardens; that Green took a great interest in the gardens, roses, etc., and was replenishing and adding to them up to the time he died (5513-14); that he had a number of boats there under crew and ready to be used at all times while he was there—the "Mable G.", the "Isola Stella" and "Friday" were the main ones (5514-

15); that when he left they were put in storage at Fogal Boat Yard, Miami, in which Green was interested (5516); that Fla. Ex. No. 18 is a photograph of the "Mabel G.", named for Mrs. Green, which was always at the dock (5516-17); that Fla. Ex. No. 19 is a photograph of the "Isola Stella" that Green had built and on the stern in large letters is "Isola Stella, Miami Beach"; it was kept at the dock while he was occupying his home there (5518); that Fla. Ex. No. 20 is a photograph of a wood carving on the prow of the "Isola Stella" (5519).

The witness further testified that Green did not entertain much but had his friends come there; that Mrs. Green had several large parties there and seemed to enjoy them; they were outstanding parties; in the early years, Green was interested in boating but not in recent years; he gave a trophy for the outboard motor race (5521); the original remained in Miami and a replica went to the winner, and identified Fla. Ex. No. 21 as a photograph of the trophy (5522-3).

Witness further testified that about March 15, 1930, Colonel and Mrs. Green entertained about 300 guests and had dancing on the "Colonel," and on April 4, 1931, they gave a luncheon for 80 guests, honoring Mrs. Bartlett; in March, 1932, they gave a supper dance for 150 guests (5524); he also remembers that Mrs. Green attended a costume ball at the Roma Plaza March 31, 1932 (5527); also that on March 15, 1928, there was a marine pageant at which Green and Mrs. Green were present in the "Isola Stella" with Mayor Sewell and his family, of Miami, as guests (5528); that during the years he was living there Green was interested in numismatics and purchased a great many coins while in Miami; he was also interested in diamonds and made some large purchases of them there; he made his purchases away from home and would bring them out in cases and boxes and show them; things of this sort that he bought at Miami he would ship by express in the first few years to the Seaboard National Bank for safekeeping and in the last few years to Round Hills, where he had a vault in the basement (5529-33). Witness identified Fla. Ex. No. 22, a letter from Green, dated Lake Placid Club, New York, December 3, 1932, to J. E. P. Dunn, United States Bureau of Investigation, New York City, in which he says that his records show that on March 11, 1929, he issued a check on the Seaboard National Bank to the order of the Richter

Jewelry Co., Inc., for $340,000, which was paid (5533); that this Company is in Miami and this was an incidental purchase; that the numismatic collection was at the Star Island home in 1936 when he left for Lake Placid, where he died, and was shipped from there by the witness (5534-5).

On cross-examination by counsel for New York, witness testified that until Green began taking servants to Star Island only a skeleton force remained at Round Hills during the Winter months; after the Florida house was ready for occupancy the help was transferred back and forth (5540-1); that he was employed in Texas to work in New York and his first office was in the Waldorf-Astoria in a room attached to the Colonel's suite and several months later at 111 Broadway, where the business of Mrs. Hetty Green, as well as Colonel Green was conducted; when he was reemployed after her death, the office was at 7 West Ninetieth Street and later transferred to 111 Broadway (5542-3); when he went with Green, the latter was not interested in Texas politics (5544); after the Florida house was acquired, it was Green's regular routine to go from New York to Massachusetts, to Florida, to Texas and back to New York; he went to Marlin, Texas, for his health (5545-6); he took his personal files from place to place and they were at Lake Placid when he died (5546); the automobile that he had in Dallas in 1910 was brought to New York and thereafter he did not keep any automobile in Texas, so far as witness knows (5547); outside of certain real estate, he then had no personal property in Texas; Green was elected a Director of the Seaboard National Bank prior to his coming to New York in 1910 and attended meetings regularly until he was incapacitated about 1921 or 1922 (5548); after 1911, with the exception of the trips to Marlin for treatment, the trips to Texas made by Green were business trips (5550); the Howland house at Round Hills was in poor condition, the new addition about 150 years old could be inhabited but the portion 250 years old could not (5551); that witness went to Bellows Falls with Green to prove his mother's Will and they drove to the cemetery and Green said, "I will be buried here sometime" (5552); that Green did not come to New York from 1933 because of the pendency of a suit in the Courts there against the Directors of the Chase National Bank—he did not want to be served; between 1910 and 1913, Mrs. Hetty

Green's health seemed to be pretty good and she was at the office every day (5553-4); when witness returned to Dallas in the Fall of 1910, Green still owned the Commerce Street house but stopped at the Adolphus Hotel (5555); that during the early years of his employment, 5 West Ninetieth Street was a very nice residential neighborhood with brownstone homes (5557); that his understanding of the reason why Green did not spend six months of any year in Massachusetts was to avoid becoming a resident of that State; that Green did not say anything to him that would indicate any love or affection for his ancestors and does not know that he ever went into the old Howland house; that a portion of it was unsafe and witness was afraid to walk across the floor (5558-9); that if Keith, Green's gardener, and Z. B. Davis, the contractor, were introduced to Green in 1917, that would fix the time of the inspection they made of the Round Hills property (5564-5); but Green made a trip to Texas on the yacht in 1917 and witness still thinks it was 1916 (5582-4); that at the time of his death at Lake Placid, Green had in his room some stamps valued at about $26,000, a part of his numismatic collection and about $3,000 in money, besides his personal belongings (5566-7); he also had his own and Mrs. Green's automobile there; his stamp collection ranked with the three or four greatest in the world (5568); witness never saw him have stamps in Texas or in Florida except what he purchased from a man by the name of Neuman down there; his principal stamp collection was kept in New York at the Sherry-Netherland (5570); some years after the Round Hills house was built, the public came in and used the beach and Green did not tell them they could not do so; this continued up to the time of his death and he never heard him complain about it (5573). Witness identified N. Y. Ex. No. 210 as a photograph of the roof of the Round Hills house taken from the air and the words on the roof were in Neon lights and kept illuminated at night for several years until discontinued; they were put there on the establishment of the airport; they were not discernible from the roadway (5577-8). He also identified N. Y. Ex. No. 220 as a photograph showing one of the letters that went on the roof; they were about twelve feet high; N. Y. Ex. No. 219 as another photograph of these letters, and N. Y. Ex. No. 218 as the same as No. 220 on a smaller scale (5578-9); he further testified that the

blimps were carrying on some experiments in radio communication in connection with the Massachusetts Institute of Technology; that he wrote letters for Green's signature; in recent years Green seldom dictated a letter; he would read over the letters written by witness and if they agreed with his ideas would sign them; the correspondence received would be read by him or to him and he would give instructions (5580-2); Green was friendly with the police of Miami and New York and on Christmas Eve went down Fifth Avenue distributing gold pieces and those who missed him rang up (5586).

On cross-examination by counsel for Mrs. Wilks, the witness testified that Green was also on friendly terms with the police of South Dartmouth and contributed to the Policemen's Ball and subscribed to the program; that they were guarding the place immediately after his death (5591); that at Round Hills the files were in steel cabinets and when they left there witness carried the correspondence files with him; they also had duplicate filing cabinets at Star Island but they had no such filing cabinets in the State of New York; when witness left Round Hills, he would take his trunks with personal belongings but leave lots of things at Round Hills, where he had a pleasant room; it was the base from which he operated (5592-3); that when Green left there, he left the larger part of his jewelry collection in the vault at Round Hills and it stayed there all the year round, it did not go to Florida or New York and he did not take it around with him; the coin collection went with them (5594); Green did not maintain a library at Star Island to compare with the one at Round Hills but he had quite a number of books at Miami which remained there (5597); there were several portraits of Mrs. Hetty Green at Round Hills but he does not recall any at Star Island; the mementoes of his early days were kept at Round Hills, they did not go to Florida or New York; the paintings at 5 West Ninetieth Street came to rest at Round Hills (5599); in the latter years of his life, Green would spend from July 1st until the latter part of the year in Massachusetts, at Round Hills, a period of anywhere from there, four or five to five and one-half months, until the 15th or 16th of December, would go to New York for the holiday season, where Mrs. Green and Mrs. Stafford, who was a member of his household, liked to shop, stay there during the first week of

January and very shortly after New Years, go to Florida (5600-1); witness would have to remind him of the time he had better get out; so far as witness was concerned, his personal preference was for Florida; Green made certain that he was never in Massachusetts longer than six months; he did not seem to be anxious to get out of New York because of any particular time for staying there and left there because he wanted to go to Florida (5602-3); when he came back from Florida, he usually went to New York until the Chase Bank suit in 1933; while there, he stayed in his apartment either at the Waldorf or Sherry-Netherland without leaving, whereas in Florida he was out every day; at Round Hills he was out in his car but when he became ill and could not handle it, his chauffeur took him around in the large car; he was out there practically every day (5604); his life at Round Hills was very much of a contrast to his life in the apartment in New York City (5604); Green never attended social functions or dances; witness knew of his interest in his ancestors because he became a Son of the American Revolution, through both lines of descent (5605); during the last ten years of his life, his chief interests were aviation, experiments in fog dissipation, radio and the atom smasher—all of which found expression at Round Hills (5606). On redirect examination by counsel for Massachusetts, witness testified that it was in the later years Green was unable to go out in boats in Florida; that Mass. Ex. No. 265, a letter from Green to Captain Newcomb, Star Island, April 12, 1929, correctly states the facts where it says:

"On account of my illness and not being able to use the boats, I have made arrangements with Mr. Fogel to put them all in dry storage. Therefore, as we haven't the 'Colonel' to take care of, it having been turned over to Mr. Fogel to convert into a dance boat for a theatrical company, we will not require the services of any of the sailors or engineers. I wish you would notify them and send them back to New York as soon as you can get the boats up to the yard.

It has been such a punishment for me to go boat riding, unless I feel better I will probably put all the boats on the market for sale and, for that reason, I regret very much that I will have to dispense with your services also after this month, in which you can have the boat account, and also an extra month's pay for yourself" (5609).

From that date on Green was rarely, if ever, in the boats.

Counsel for Massachusetts gave in evidence Exs. Nos. 269, 270, 275, 281, 290 and 291, relating to the trophies given by Green (5610); No. 291 being a bill dated November 18, 1929, for one special silver trophy as per approved design Round Hill trophy $2500, and seven special silver miniature trophies $1050 (5617).

Witness further testified that during the last three years in Florida, the "Mabel G." and the "Isola Stella" were tied up at the dock and the "Friday" was not put in commission at all (5618). Counsel for Massachusetts also gave in evidence Ex. No. 164, a letter from Green to his sister November 2, 1924, regarding a visit from Rev. John Grixston Currier, of Bellows Falls, Vermont, and the inscription upon his mother's monument, in which he said that the interest on the donation would not be sufficient for the upkeep of the graves "and also the additional lot which I have reserved for myself, and also one for you, if you want it, * * * I was led to believe that you and Mrs. Bancroft had, either jointly or separately, given something to the Parish. If not, don't you think it would be a good plan to make them a Christmas present this year?" (5624-5).

Also Mass. Ex. No. 169, a letter from the Rev. Currier, Bellows Falls, Vermont, November 11, 1924, to Green, in which he says:

"Since my conversation with you on Oct. 30th I have with the assistance of the sexton discovered where your leg was buried in your father's lot in the Churchyard. It was on the North side of the monument. We made four excavations before we found it. We have been very careful to avoid any publicity in the matter and have thus far succeeded" (5626-27).

Witness further testified regarding the letter to Mrs. Brooke July 30, 1927, Mass. Ex. No. 225, that he and Green discussed her complaint and between them composed that letter, that Green took part in the discussion but not in the direct dictation; the letter expresses his ideas or he never would have signed it; he signed all letters witness dictated and always read them before signing (5630); witness stated he was confident that the first visit to Round Hills made with the Colonel was in the Fall of 1916 after his mother's death (5630); the Town of South Dartmouth, exclusive of Nonquitt and Salters Point, is an all-year-round place of resi-

dence and Green was friendly with Mr. Tiffany, Mr. Davis, Mr. Neyland, who lived there, and with Mayor Ashley, of New Bedford; that Green's friends were among the all-year-round residents rather than the residents of Salters Point and Nonquitt, he did not care much about the others; when they protested against his aviation field and broadcasting, the townspeople of South Dartmouth and New Bedford rallied to his support (5632-3); Green resigned from the Wamsutta Club after they had expelled a friend of his; he never went to any of those clubs (5634); a jeweler who sold him goods in Miami also came to sell him jewelry at South Dartmouth (5635); that the check for $100,000 on the American Exchange National Bank to the order of the Security National Bank, Tex. Ex. No. 30, was framed and on its back said, "This check saved the Security National Bank from failing" and hung in the library at Round Hills; the inscription was placed there by Green's direction (5635-6, 5642).

On recross-examination by counsel for Texas, witness testified that when he said Green had no interest in politics after 1910, he meant active interest as to political positions —not in the way of voting; he was a very staunch Republican and never registered for voting in New York, Massachusetts or Florida so far as witness knows, and continued to pay his poll tax in Texas until he was exempt at the age of 60 (5637-8); that when he said Mrs. Hetty Green was in good health the last time he saw her about 1913, he meant she was well enough to be in the office every day, although she was then an old woman; that the presence of Colonel Green relieved her of many arduous tasks she would have had to perform herself; he was affectionate and seemed to think a great deal of his mother and was solicitous of her health and welfare; she rather resented having anyone look after her—she was able to do it herself (5638-9); that on the trips to Texas, he met his friends and enjoyed the association with them while he was there and looked forward with pleasure and anticipation to seeing his friends again; both Green and the witness were pleased and happy before embarking on their trips to Texas; that witness owns a home in Marlin (5640). On further cross-examination by counsel for Florida, witness testified that it was four and a half miles to Padanaram and nine miles to New Bedford from Round Hills (5643-4); that Green in the last years of his life kept coming earlier to Miami each year and staying later (5645).

Witness identified Fla. Ex. No. 23, Green's resignation May 17, 1932, from the Country Club of New Bedford (5648), and Fla. Ex. No. 24, Lake Placid Club, New York, December 5, 1932, Green's resignation from the Wamsutta Club of New Bedford, reading: "Due to the condition of my health and the fact that I have never been able to take advantage of the facilities afforded by the Club, I desire to respectfully tender my resignation" (5650).

GERDA AUGUSTA BERGLUND (nee Larsen) of Stockholm, Sweden, testified she came to the United States in 1913 and on January 17, 1918, was employed by Mrs. Green as personal maid when they lived at 5 West Ninetieth Street; the same day they moved to the Waldorf-Astoria and she assisted in moving their personal effects; they moved no furniture; they remained in New York until June 30th, then went to South Dartmouth, Massachusetts, arriving there July 1st; witness went with them and they lived on the yacht "United States"; Green went to New York City on Tuesday night usually and returned Friday morning throughout that season (5665-6); about the latter part of October he went to Texas for two or three weeks and was in New York the rest of the Winter (5667); until July 1, 1919, they lived at the Waldorf; in May, he went to Texas and the 30th of June went to South Dartmouth, arriving July 1st; they lived first on the yacht "United States," which sank about August 21st, when Green was in New York—it was his birthday present; the Greens then went to the Tabitha Inn in Fairhaven, opposite New Bedford (5668); during the Summer, he usually spent some time around the South Wharf in South Dartmouth, where he had some boats and went to the farm at Round Hills, returning in the evening to the Inn; they had started to break ground for the house in 1919 before the sinking of the yacht; she was told that Mrs. Green was the first one to turn a shovel of dirt where the house was going to sit; Green said, "Now the first day's work is done and I am going to build a big substantial house at Round Hills and it will be staying there for many years after I am dead and gone" (5669-70); he returned to New York about the middle of October, 1919, and made his usual visit to Texas in November and came back to New York; on these trips to Texas in the Spring and Fall he went alone; in 1920,

up to the 1st of July, they lived at the Waldorf-Astoria; he made the trip to Texas that Spring and went to South Dartmouth June 30th, arriving July 1st (5671); they lived on the house boat "Day Dream", which was kept at the South Dartmouth Wharf, which Green owned; the building operations of the house were going on that Summer and had reached the second floor; they left the latter part of October; during that Summer, Green usually came down to the farm, looked over the house, shopped in New Bedford and sat around the wharf; he went to Texas alone the first of November and returned to New York about two weeks later; they lived at the Waldorf-Astoria Hotel until July 1, 1921; in May, 1921, he made his usual trip to Texas with Mr. Marshall and went to South Dartmouth June 30th, arriving July 1st (5673-4); the Round Hills house was opened in 1921 and they lived there that Summer, staying until about the middle of October, when they returned to New York; in the latter part of October he went to Texas; up to this time witness had been Mrs. Green's maid, performing the usual duties, and also helped Green in the morning, getting out his clothes and his breakfast; during these years he habitually went to his office and to the Bank while in New York, his health was very good; he had had hemorrhoids for many years and used to complain of headaches and took a number of glasses of bromo-seltzer when he came home early in the afternoon from the office or from shopping, sometimes as many as ten to fourteen from three o'clock in the afternoon until ten or eleven o'clock (5676-7).

Witness identified Mass. Ex. No. 112, a telegram from Green to her November 4, 1921, when she was with Mrs. Green and Mrs. Stafford in French Lick, Indiana, where they had gone with him on his trip to Texas and stopped while he was away (5677), and testified that shortly after his return, he was placed under the care of Dr. Pascal and in the Fall given a blood transfusion; in January, 1922, the witness went with Green and Mrs. Green to Marlin, Texas, and remained there until May, three months; he then went to Dallas for a couple of weeks; his condition on arrival at Marlin was very bad, he was not able to walk; on leaving Marlin, he walked very well; they returned to New York and on June 30th went to South Dartmouth, arriving July 1st; Green never went to New York in the Summer after they moved into the house in 1921 (5678-9); in January, 1922, Green employed witness as his personal attendant and paid

her wages; from January, 1922 until January, 1930, with the exception of a trip to Sweden in 1925, she was with him and took care of him practically all of the time, day and night, without any vacation (5680-1).

Counsel for Massachusetts gave in evidence Ex. No. 186, a letter from Green to witness December 24, 1924, enclosing a letter to the Seaboard National Bank, making a Christmas gift to her; No. 193, a telegram from Green, Miami Beach, to L. N. DeVausney, March 22, 1925, regarding transportation for Gerda; No. 216, a letter from Green to Gerda, December 27, 1926, acknowledging receipt of a cigarette box and match case; No. 277, a letter from Green "To Whom It May Concern," January 24, 1930, stating that Gerda Larsen had been in his employment as nurse for the past thirteen years and leaves on account of ill health; No. 282, a letter from W. K. Potter to Green, April 23, 1930, stating that Gerda Larsen had called that day to inquire whether he had any objection to her having her dividend checks sent to the Westminster Company to be applied on account of the amount due Green and also that she had stated that her doctor had advised her that she did not need an operation at that time (5686-94).

Witness further testified that on June 9, 1925, she went to Sweden; that during the period from 1922 to 1925, when she left, Green's condition was very good; that he would see the physician once in awhile when he came to New York (5696); he continued to suffer from hemorrhoids until Dr. Pascal operated on him in 1923; loss of blood had caused anemia; witness refused to give him bromo-seltzer when he asked for it and would take it away from him when she saw he was going to take it; on occasions she found it hidden around the house and took it away; because of that he many times threatened to discharge her and then would say, "It makes no difference how many times I tell you to go, do not leave me because I don't mean it, etc." She succeeded pretty well in keeping it away from him but when not with him or when he went to town to the drug store, he would take it (5698); in 1923, '4 and '5, he did not require any blood transfusion (5699); when she returned from Sweden in October, 1925, she saw that he had been very ill and said to him, "I see what you have done while I have been away—you have used that bad stuff again" and he said, "Well, you left me all alone" (5700); up to the time she went on

her vacation, while at South Dartmouth, he would be outdoors except when it was raining and when in the house would work on his stamps, and when he went to New York, would work on his stamps in the hotel; he could walk around the room without assistance and a couple of times went down to the Bank, but most of the time was in the room at the hotel; before [illegible], he would usually go to the matinee with the girls on Saturday afternoon but did not go after the injury (5701); their relations were very friendly and he was quite confidential with witness at times; sometimes Mrs. Green would get her to intercede with the Colonel when she wanted to have luncheon parties at the house (5702-3-4); it was not his custom to serve liquor to his guests; he did not drink himself and witness has asked him to serve liquor to his guests when he had parties on the boat in Florida (5704-5); he entertained friends from New Bedford and Texas at Miami but did not have much company and did not go out to social functions (5706); at South Dartmouth, he would talk with his guests and had a moving picture apparatus there; he would have his friends from Texas visit him there and also the girls he was educating during their vacation from school; they and Mrs. Stafford were the only members of the family party generally (5707); he took much interest in them and spent considerable time with them, watching them swim in his pool or at the beach; this continued while he was at South Dartmouth; some of Mrs. Stafford's relatives also visited there; he did more entertaining at South Dartmouth than in Florida (5709); on one occasion when they had stayed on late, around the 17th or 18th of December, he said, "I heard when I was up in New Bedford today that they were very pleased to see me down here so late, and they think I am going to stay here for Christmas, and then they think they are going to catch me, but, he said, I am going to fool them; I am going to leave before the time is up"; he used to say that he could not stay at Round Hills and had to get out of there before he had stayed there six months because he did not want to pay the taxes (5709); he told witness he had rented a room in Texas where he had a trunk and some old clothes in the trunk but he had never been in the room—had never seen it—would laugh about it (5710); on one occasion at South Dartmouth when he was telling witness about having to get out before the time was up he said, "I

am going to do like my mother, I change residences so I do not have to pay taxes, by moving around like my mother did" (5710); on one occasion witness asked him what was to become of the Round Hills house if anything happened to him and he said, "I am planning to have an experimentation station down here, but if I go first Round Hill and the house is to belong to my sister, who will then do the way she like to have it" (5711); he further said he would like to have it a memorial to the Green and Howland family so the name would live after he was gone because he was the last of the Greens; he said nothing to her about turning the house into a hospital or old ladies' home or into a museum, but he planned to build a museum down there, but she does not know whether he located any special place; that when he brought home from New Bedford some old whaling things he had bought, he said "I am going to build a whaling museum down here;" that was about the time he became interested in the "Charles W. Morgan," before the blacksmith shop was set up (5711-12); he said, "I have given Mrs. Green a lot if she like to build a house up there and have her cousins come and live there and sometime she may like to have it herself" (5712); that lot was up on the hill on the road next to Salters Point, it is a square piece, marked off, and he frequently spoke of it (5712); the last years he paid witness $200 a month and she allowed him to keep some of the money and invest it for her; she also borrowed $1,300 for her brother and paid it back partly from the interest on the securities he had given to her and identified a list of these securities signed by Green January 28, 1929, Miami Beach, Florida (5714); he also made her gifts of jewelry—rings, which she exhibited; she further testified that Green would stay up late in the evening to twelve or one o'clock, and she would remain with him and Mrs. Green would come in occasionally and talk with them but did not spend the whole evening; Green liked to work on his stamps and coins and did not want anybody to talk to him very much (5715); from 1925, when she returned in the Fall, during the years 1926 to 1930, his health was pretty good, he could walk around but in later years he did not care to walk, because his knee hurt him and he felt enfeebled walking and standing on it; he was sitting in the wheel chair most of the time and had to be wheeled about and would step from the wheel chair to the car when he was going out and again when he

returned; it was very hard for him to get into boats and easier to get into automobiles (5716-17); Green told witness Round Hills was the property he got after his mother's death, that it belonged to the family for many generations from the early days of the settlement, that he had played as a boy in the old homestead and he would like to make it a nice place, that his sister did not like to have the large place and that it was better for him to incorporate it and she would take the Bellows Falls house (5717); he told her there were two homestead places, one in Bellows Falls, which belonged to the Greens and one at South Dartmouth that belonged to the Howland family, and that when his mother died he had a conversation with his sister and as a result he took Round Hills and Mrs. Wilks got Bellows Falls (5718-19); that he never told her he was going to Texas to live; he said he was collecting the whaling implements because that was where his family made the first money (5719); on the walls at Round Hills he had paintings of his mother, and of his grandmother and a picture of the Captains of the Stone Fleet, a group of Captains of the whaling vessels, and several other whaling pictures; he did not have any family portraits at Star Island; sometimes he would say, "I went by the house my mother was born in today" (5719-21); that he used to go shopping and buy clothes for the young girls that he was interested in and for witness and Mrs. Green, and had blank order forms for the young girls (5721-22).

Witness identified Mass. Ex. No. 376 as one of the blanks which Green used to buy clothes for the girls when they were at school and the same was given in evidence (5723).

Witness further testified in the years 1918 to 1921 when the construction work was going on, Green would be out every day except when it was raining; that Mrs. Wilks visited Round Hills twice while witness was there, on one occasion staying four or five days and another time a couple of days; she never visited Star Island while witness was there (5729); that Green started to buy jewelry in Miami in 1926 and kept it in the safes until it was shipped to the Chase National Bank; that he took a few boxes of rings with him from Florida to Round Hills but most of it was stored in the Chase Bank which witness packed for shipment in 1929.

On cross-examination by counsel for Texas, the witness testified that in January, 1922, she began to take care of the

Colonel like a child and continued up to the time she left in January, 1930, and that such attention was necessary—in the morning gave him a massage and sometimes also at night, dressed and undressed him, because sometimes his arthritis was so bad he could not use his hands (5742-59); that she gave him undivided attention to such an extent that she almost had a nervous breakdown in 1930; there were periods when he did not sit in a chair because he was not feeling good and there were other periods when his health enabled him to get into the chair himself (5760); he said the doctors had told him to go South in order to keep his health; in those later years he had rheumatism or what you would call chronic arthritis; he said, in effect, that he followed the sun (5763-4); that when he told her he was going to fool some folks in New Bedford and move out of there at a certain time, he laughed and told her he was not going to be a resident of Massachusetts (5765-66). On cross-examination by counsel for New York, the witness testified that Dr. Pascal told her bromo-seltzer was bad for the Colonel and to try to prevent him from taking it (5764); that he did not work on his stamp collection at the Sherry-Netherland, he was interested in coins then (5767); that Green told her of his room in Terrell, Texas on several occasions (5769).

On cross-examination by counsel for Mrs. Wilks, the witness said the dining room in the Sherry-Netherland was occupied as an office by Mr. Marshall and the family ate in Mr. Green's big room, where he had a desk and safes (5771); in 1921 and 1922, the servants at Round Hills stayed all year, after 1925, when they began going to Florida, they came back and forth (5772); Green said that he would like to stay at Round Hills as long as he could but could not stay longer than six months (5773); during all the time she was with him, Green's mind was all right, he was the boss at Round Hills, and when it came to going anywhere he made the decision (5774); during all the time she was there he had only one leg and after 1921 he got water on the knee of the other leg; it was always difficult for him to dress himself and witness helped him to dress before he got water on the knee—the help she gave him was in every day things like getting his clothes on and off; he had no difficulty in seeing any one he wanted to during the period she was with him (5776-7).

On redirect examination by counsel for Massachusetts, witness testified that if she used the word "incorporate" in connection with Round Hills she must have used the wrong word; Green said he was building the house there and would like to make a nice show place of his old home place and he was going to live there (5780); that when he said he did not want to be a resident of Massachusetts he also said he did not want to be a resident of New York or a resident of Florida (5781); that he did not take twelve or fourteen bromo seltzers every day but only the days he had a headache and sick stomach (5782).

On further cross-examination by counsel for Florida, witness testified that Green said he did not want to become a citizen of any place saying, "I don't want to be a resident of New Bedford, or South Dartmouth, or Florida or New York," but she cannot fix the year (5782); that when he took bromo-seltzer he was in bad humor and would get angry with the least little thing; he had a habit of concealing bromo-seltzer about the room, went to New Bedford to get it and did the same thing in Florida when they tried to keep it from him at home (5784).

Wilbur K. Potter, on being recalled by counsel for Massachusetts, submitted a statement prepared by him of the capital expenditures and expenses of the Green property at South Dartmouth from 1917 to 1936, inclusive, compiled on the same basis as Fla. Ex. No. 5, and said statement was given in evidence as Mass. Exs. Nos. 410, 410-A-B-C (5804-14); he further testified that the statement did not show all the radio expenses before 1924, when they started their capital account, and that such expenses were charged to Green personally; the same is true of the construction expenses for the radio station. Said statements are as follows:

"Massachusetts Exhibit No. 410

E. H. R. Green's Property, South Dartmouth, Mass.

	Round Hills Farm		Round Hills House	
Year	Expenses	Principal	Expenses	Principal
1917	$365.13	51,076.60		
1918	19,633.04	303,642.86		
1919	67,205.63	96,929.36		164,021.54
1920	53,222.74	71,640.34	2,595.50	589,732.61
1921	136,167.95	45,505.31	59,456.54	221,569.27
1922	160,394.09		64,108.20	
1923	219,963.06	42,286.35	53,584.13	10,000.00
1924	294,800.32	3,046.62	51,018.87	
1925	324,578.48		92,940.16	
1926	230,353.13		67,707.64	
1927	127,601.85		65,383.13	
1928	106,317.91		66,802.16	
1929	89,320.44		69,262.43	
1930	79,834.76		48,264.32	
1931	72,691.39		53,798.96	
1932	68,211.63		48,154.27	
1933	65,625.62		62,197.65	
1934	61,224.57		54,575.85	
1935	63,063.07		51,982.52	
1936	28,819.35		11,205.56	
	$2,269,400.16	$616,127.44	$924,037.89	$785,323.42"

"Massachusetts Exhibit No. 410-A

E. H. R. Green's Property, South Dartmouth, Mass.

	South Wharf		Round Hills Radio
Year	Expenses	Principal	Expenses
1918		$76,855.33	
1919	4,542.93	44,048.80	
1920	7,890.43	10,013.93	
1921	20,845.99	2,396.71	
1922	18,514.44		
1923	8,225.51		
1924	8,439.80		
1925	8,469.57		34,806.68
1926	8,490.24		58,552.41
1927	9,388.42		48,151.31
			287,732.79

Year	South Wharf Expenses	South Wharf Principal	Round Hills Radio Expenses
1928	8,509.56		310,100.06
1929	9,061.33		505,432.08
1930	8,371.81		90,325.87
1931	8,783.77		29,842.70
1932	6,757.63		28,841.17
1933	8,369.15		28,943.92
1934	9,788.22		42,363.64
1935	11,272.67		41,000.73
1936	4,711.18		18,366.95
	$170,432.65	$133,314.77	$1,524,460.31

Machine Shop, South Wharf

1920	$65,487.00
	170,432.65
	133,314.77
	1,524,460.31
	$1,828,207.73
	65,487.00
	$1,893,694.73"

"Massachusetts Exhibit No. 410-B

E. H. R. Green, Whaling Enshrined

Year	Expenses
1926	$11,407.80
1927	9,876.65
1928	11,487.31
1929	12,920.01
1930	14,269.16
1931	22,914.19
1933	14,289.10
1934	8,320.56
1935	14,203.03
1936	7,016.04
	5,729.09
	$132,432.94"

"Massachusetts Exhibit No. 410-C

E. H. R. Green's Property, South Dartmouth, Mass.

Year	Expenses	Principal
1919		$27,468.97
1920		19,183.52
1922		17,524.91
1923	1,222.98	
1924	222.59	
	$1,445.57	$66,177.40"

(5809-13.)

Witness also testified that he had prepared a statement of the capital account of the Round Hills House, the Round Hills Farm, the South Wharf property, the Machine Shop, and the so-called hotel at Round Hills and same was given as Mass. Ex. No. 411 (5818-30). The details of the principal items indicated thereon are as follows:

"Massachusetts Exhibit No. 411

Round Hills House—South Dartmouth

Capital Account

7/16/19 to 2/15/23 $785,323.42

Round Hills Farm

10/5/17 to 2/11/24 $616,127.44

South Wharf Property

10/10/18 to 1/13/21 $133,314.77

Machine Shop—South Wharf

10/25/20 to 12/21/20 $65,487.00

Hotel—Round Hills

9/23/19 to 12/6/22 $66,177.40"

Witness further stated that the first voucher for the work at Round Hills was October 5, 1917 (5831) and that the total expenditures for the South Dartmouth property as shown

upon Mass. Exs. Nos. 410 and 410-A-B-C is $6,688,639.55 (5832).

The witness thereupon examined and identified Mass. Ex. No. 66, a blank book marked "Abstract" from the files of Colonel Green, as containing annotations in his handwriting and certain writing of his mother (5833) and stated that on pp. 30-31 there is what purports to be a description of Round Hills Farm followed by writing of Mrs. Hetty Green (5835-43).

Counsel for Massachusetts gave in evidence Mass. Ex. No. 67, a letter from Green to his mother, August 22, 1893 (5845), reading:

"I am 25 years old today. I think you might send me money so I could go the Fair at Chicago in about two weeks before the fall rush comes. It would only cost about 200 00/100 dollars. I can get Passes to Chicago and return let me know as soon as you can so I can get ready I want to see the Fair so bad. Please let me go."

T. W. Chrystie, Special Administrator, recalled by counsel for Massachusetts, identified an album of photographs of the Round Hills Estate, South Dartmouth, taken in connection with an insurance survey made by an Insurance Company for the Estate and stated they contained all the buildings at Round Hills and the South Wharf property, with some minor exceptions, a total of 60 structures (5854). In response to questions by counsel for New York, he said the old Howland house was not numbered in the photograph and was unidentifiable. The album was given in evidence as Mass. Ex. No. 412 (5856).

Oscar Carlson, of New York City, testified that he was employed by Green June, 1928, as a second man and afterwards as butler until the Round Hills house was closed December, 1936 (5858); that his duties were to bring Green's coffee at seven o'clock, serve him his breakfast and sit with Green until his nurse came, press his clothes, serve his lunch, take him downstairs in the wheel chair and meet him when he came back because he could not walk from the car, sometimes dressed him when the nurse was off and sat with him so he would not be alone; that he

spent many hours sitting with him (5859); in their conversations, Green told him that the estate had belonged to his family since back in the Sixteenth Century; that his grandfather was a Captain of a whaling ship, told him whaling stories and said the famous fortune was founded in whaling and the whole city depended on that industry; that he had a whaling ship now in memory of those days; advised him to read a book in his library on the Howland heirs (5860); he said that his mother brought him up there when he was a young boy to see the place and that the house where his mother was born was in New Bedford; he had pictures of it in his library which witness has seen (5861); Green went to Marlin, Texas, in 1935 and when he came back witness met him on the porch and he said "Gosh, it feels good to come back again"; witness used to talk to him about going back and he said "if I go back to the old country it would not be the same as many years ago because many years have passed," and asked him if the place was like the same and he said, "Ah, that's gone for me" (5862); Green said he didn't stay at South Dartmouth longer because of the cold weather; that he liked to go to Miami in the Winter because it was warm and the Winter is cold and dreary at Round Hills because it is so near the water (5862-3); when he asked him his reason for not staying more than six months, he said that by going down to Florida and not staying six months in Massachusetts he saved in taxes as much as it cost to run all the places if he had stayed (5863); Green spent much time at South Dartmouth reading the books he had there; he did not have a library in Florida but had a few books on shelves (5863); he opened the beach at South Dartmouth because he liked to see the people; he did not want to be alone; instead of going to New Bedford he would rather have the people come out to see him; he had a lot of friends and when he parked his car a lot of people came to see him and saved him going to New Bedford; he seemed to be very proud of the place because he built it himself (5864). On cross-examination by counsel for Texas, witness testified that Green told him that his Grandfather Robinson was a Whaling Captain and sailed out of New Bedford; showed him a picture of the house where his mother was born, now a sort of Catholic Home (5864); before he got sick, he liked to have people come out and talk with him, although he did not like company; the last few years he seemed to prefer

to be alone and did not want to see anybody except the doctor unless it was on urgent business; he was confined to his room mostly in the last few years; sometimes he would stay in bed until one o'clock, then would get into the wheel chair and go downstairs if he was going out; the last few years he didn't go out so often and didn't seem to be able to enjoy talking to people because he could not concentrate (5865-6); he mostly read books on numismatics and liked to look at the magazines and monthlies; he had a stamp collection and was interested in new books about them (5868); Green took great pride in the fact that he had operated the Green Floral Nursery and said that it was the finest nursery in the South and that he had made a profit when he sold it; told witness that he was President of a Railroad in Texas and owned thousands of acres down there worth about $1.00 an acre; he said he had worked down there for $40.00 a month on his first job (5869-70).

On cross-examination by counsel for Florida, the witness testified that he was born in Stockholm, Sweden, was butler for Green in Florida; that in 1935 and 1936 Green did not go out every day but stayed in his room; prior to that he would go out riding in the afternoon practically every day when the weather was nice (5875); he had three boats at the dock ready for use; the last three years he didn't go boating; in 1933 and 1934, he might have gone out two or three times in the Winter in his boats (5876); he went out in his automobile every day but the last couple of Winters he went out only two or three times a week (5877); the Star Island house was one of the most elaborate there but witness would not brag about the furniture, although it might have been valuable (5879); he does not know whether the furniture was made to fit the rooms or the tile made for the mansion house because it was before his time; the gardens were nicely laid out and it was one of the best places on Star Island (5879-80); Green was living in Florida when he went to his death bed; he then had about 22 servants in the house; the last few years he had only one automobile and Mrs. Green had one and there was a Ford for the chauffeur (5880-1); at both Round Hills and Star Island he used to see people when he was out but very seldom had anyone come to see him in the house (5881); in the last few years at Round Hills he did not go out when it was foggy or raining; when they were building the airport he would be out in any kind of weather (5882).

Thereupon counsel for Massachusetts gave in evidence the following Exhibits:

No. 68, deed dated April 23, 1913, from Nathaniel Howland, etc., to F. William Oesting, of New Bedford, of a tract of land on the West Shore of the Apponegansett River (5892-3).

No. 73, letter dated April 17, 1918, from Green to Henry M. Plummer, of New Bedford, about the complaints of the people of New Bedford and South Dartmouth regarding the improvement of Round Hills Farm (5895).

No. 75, letter dated New Bedford, August 30, 1918, from the Davis Corporation to Green regarding the analysis of spring water (5897-9).

No. 76, deed of Tiffany, Davis and others, Trustees of the South Wharf Trust, to Green, of Terrell, Texas, conveying certain land and buildings in South Dartmouth adjacent to land of the New Bedford Yacht Club, dated October 24, 1918 (the wharf in Padanaram Harbor, where the "United States" sank) (5899-5900).

No. 83, letter from Green, June 10, 1919, enclosing a check for Tercentenary Membership in the New England Historic Genealogical Society (5901-2).

No. 84, photostat copy of agreement dated June 12, 1919, between Hitchings & Company, contractors, and Green, of New Bedford, Massachusetts, for the erection of a greenhouse (5902-6).

No. 85, agreement June 26, 1919, between the R. H. Howes Construction Company, New York City, and Green, of Terrell, Texas, for the construction of a residence and appurtenances at South Dartmouth, Massachusetts, in accordance with drawings and specifications prepared by Alfred C. Bossom, to be completed within twelve months, for the contract price of $424,800 (5908-19).

No. 91, memorandum dated October 15, 1919, from W. H. M. (Marshall) to Green of a message regarding lilacs (5919).

No. 92, letter from Alfred C. Bossom, architect, to Green November 24, 1919, regarding utilization in the South Dartmouth house of the plumbing fixtures, etc., from the yacht "United States" (5921).

No. 93, letter to Green from Henry L. Tiffany, New Bedford, March 19, 1920, regarding the sale to him of the Howland Farm (5924).

No. 94, another letter from said Tiffany to Green March 22, 1920, reporting progress and requesting his check (5926-7).

No. 95, letter from Green to Tiffany, March 24, 1920, enclosing check for part purchase price of the Howland property (5928).

No. 96, letter from Tiffany to Green acknowledging the same March 26, 1920 (5930).

No. 96-A, Tiffany's receipt to Green for $10,000 March 26, 1920 (5932).

No. 97, deed dated March 31, 1920, from Violetta E. Oesting and others to Robert A. Terry, of land on the Apponegansett River and

No. 98, another deed between the same parties conveying an interest in the same property, March 31, 1920 (5932-3).

No. 99, letter from Green April 30, 1920, to Lee, Higginson & Company, Boston, enclosing check for $700 for the Pilgrim Tercentenary Memorial Fund of the New England Historic Genealogical Society, to establish a memorial in the name of Hetty Howland R. Green (5934-5).

No. 100, photostat of certificate May 5, 1920, in the name of Edward H. R. Green, of Terrell, Texas, for 100 shares of the West Shore Trust under certain deed of trust May 5, 1920, recorded in Bristol County, Massachusetts (5935-6).

No. 101, deed from Charles S. Ashley and others, bearing the signature of Green, dated May 5, 1920, covering certain real estate in South Dartmouth held by the West Shore Trust (5937-50).

No. 102, deed from said Ashley and others to Robert A. Terry in connection with the West Shore Trust May 5, 1920, containing a reservation of the Nathaniel Howland family burial ground (5950-1).

No. 105, letter from Frank C. Taylor, general contractor, January 18, 1921, to Green submitting a proposal for protecting the shore line at the Round Hills property (5952-3).

No. 106, letter from said Taylor to Green March 14, 1921, regarding building a sea wall at Round Hills, and No. 107, letter to said Taylor from Green March 17, 1921, acknowledging same and stating he expected to be at South Dartmouth before very long (5954-6).

No. 108, photostat of letter form addressed to the Corresponding Secretary, New England Historic Genealogical Society March 19, 1921, from Green accepting the election to membership and enclosing genealogical data;

"Edward Howland Robinson Green

Birthplace: London, England.
Full date of birth: August 22, 1868.
Present legal residence: Terrell, Texas.
Post Office address: 111 Broadway, New York City.
Your Father's name in full: Edward Henry Green.
His birthplace: Bellows Falls, Vermont.
Full date of birth: February 6, 1821.
Your Mother's Maiden Name, in full: Hetty Howland Robinson.
Her birthplace: New Bedford, Mass.
Full date of her birth: November 21, 1834.
Her Father's name in full: Edward Mott Robinson.
Her Mother's maiden name, in full: Abby Slocum Howland" (5959).

No. 109, letter from J. Edward Harris Co. to Green April 7, 1921, submitting proposal for remodeling the old Howland House (5961-3).

No. 111, letter from Alfred C. Bossom, architect, to Green July 1, 1921, thanking him for certain architectural books that he had given him and stating:

"Now that your building is practically finished, if you will allow me, I would like to state it has been an exceedingly great pleasure on my part to handle this work for you * * *. I am sure I will only be repeating what you must have heard many, many times before that I frankly never met anyone with such a fund of accurate information" (5964-5).

No. 113, letter from Green, Marlin, Texas, April 19, 1922, to Francis Hart, Boston, in which he said:

"The spring weather has made me commence thinking of going to Round Hills for the summer. If you will remember, we had some conversation last summer in regard to radio and wireless telephone. At that time you suggested that I do nothing, as some of your friends were perfecting outfits for receiving and sending. The craze has struck Texas, where I am temporarily located on account of Rheumatism in my right knee, and I desire to install at Round Hills the best outfit I can possibly get. If it is not asking too much, I would appreciate your advice as to what kind of a set I should secure. I want to furnish as much amuse-

ment as possible for my guests and neighbors during the coming summer" (5966-7).

No. 115, letter from Green, Waldorf-Astoria, June 2, 1922, to Warren Bartlett, of the Auto Selling and Supply Co., New Bedford, ordering a Buick Sport Roadster to have the initials "R. L. L." (5969).

No. 116, letter from Green, New York City, June 9, 1922, to George Anthony Hough, Managing Editor, The Standard, New Bedford, advising him that he had made a contract with the Western Electric Company for radio broadcasting station at Round Hills which will enable any set within 100 miles of New Bedford to hear the program and that during the Summer months they will be able to give an entertainment equal to any in the country for the benefit of their New Bedford friends (5972).

No. 118, letter from Green June 12, 1922, to H. E. Hobson, Assistant General Manager, Southwest General Electric Co., Dallas, Texas, on the same subject, in which he says this "will probably be one of the first relaying stations outside of their New York office" and will be owned by the Round Hills Radio Corporation (5973).

No. 119, letter from Green June 15, 1922, to the Brunswick-Balke-Collender Co., New York City, on the same subject, inquiring whether it will be possible to secure Brunswick records for broadcasting previous to the time they are placed for sale, in which he says:

"As stated before, this broadcasting station is to be located on my private estate and no advertising matter whatever will be broadcast" (5975-6).

No. 124, letter from Newson & Company to Round Hills Radio Corporation, July 6, 1922, giving permission for the broadcasting of stories from the book "Folk Lore from Foreign Lands" (5979).

No. 128½, letter from Green to Frank M. Corlett, of The American Radio Relay League, Dallas, Texas, November 27, 1922, of his experience and interest in broadcasting, in which he says:

"For instance, last night in my residence at South Dartmouth, near New Bedford, Mass., we heard Atlanta, Ga. perfectly.

* * * * * * *

Any movement started in Dallas with a view of establishing a high-class broadcasting station, contemplating not only the initial cost of the station, but also an assured source of revenue necessary for its maintenance, will have my hearty cooperation and some small financial assistance (5981-5).

No. 130, letter from General Electric Company, Schenectady, January 8, 1923, addressed to Round Hill Radio Co., asking whether certain numbers were broadcast on certain days (5985).

No. 131, letter January 18, 1923, from the Round Hills Radio Corporation to the Second Operator, Steam Ship "President Fillmore" thanking them for the advice that their concert from Massachusetts was heard in the English Channel and stating:

"Your letter was particularly interesting to us for the reason that it is the first advice we have had that we are reaching Europe" (5988-9).

No. 133, letter January 25, 1923, from General Electric Company to Marshall, Green's secretary, in which it is stated:

"It is very evident that your broadcasts were heard clearly on the other side of the Atlantic" (5991).

No. 134, letter from Green, as President of the Round Hills Radio Corporation, to A. Shaw, England, February 7, 1923, regarding the broadcast from South Dartmouth which was heard in England (5994).

No. 135, letter February 7, 1923, from Green, as President of the Round Hills Radio Corporation, to the General Electric Company thanking them for their previous letter, No. 133 (5996).

No. 136, letter to Green from Pierce & Barreau, February 20, 1923, regarding payment for completed broadcasting room, etc. (5998).

No. 137, Green's reply enclosing check February 22, 1923, for $2,000 (5999).

No. 138, letter from Green, Jacksonville, Florida, April 30, 1923, to Broadcasting Sales Engineer, Western Electric Company, requesting them to furnish a receiving set not later than May 15th, "at which time I expect to be returning from the South on my way to South Dartmouth" (6000).

No. 141, letter from the Secretary of the Country Club of New Bedford, August 9, 1923, to Green advising him of favorable action upon his application for membership for himself, Mrs. Green and two guests, and No. 141-A, official notice from the Club, and No. 141-B, relating to same subject (6002-9).

No. 284, letter from Green to William M. Emery, Transcript Office, Boston, regarding a book concerning Mrs. Hetty Green, in which he says:

"It pleases me to learn that the people in New England who have communicated with you do not sanction the scathing remarks these two unauthorized men have made of my mother" (6020-1).

No. 142, certificate of incorporation of the Round Hills Radio Corporation August 15, 1923 (6022).

No. 143, telegram from Green August 25, 1923, to Joseph J. Johnston regarding broadcasting station of the Round Hills Radio Corporation, in which he says, "Ours is largest broadcasting station in New England" (6024).

No. 144, bill paid by Green for stationery sold Round Hills Radio Corporation (6025).

No. 146, letter from Green, Jacksonville, Florida, January 28, 1924, complaining of non-completion of work on house boat "Colonel" to be "used in Southern Florida during the months of January, February and March" and stating:

"Upon receipt of your wire that the boat would be ready, we packed up and came on. We have been here now three weeks and the cold disagreeable climate is not helping my health any" (6026).

No. 147, letter from Round Hills Radio Corporation June 23, 1924, to The Standard, New Bedford, Mass., enclosing program of radio broadcast commencing July 1st, 1924 (6027).

No. 149, letter to Green July 8, 1924, regarding broadcasting program of the Convention (6028).

No. 150, letter from Green July 28, 1924, to American Optical Company inquiring about a telephoto lens, in which he says:

"Our studio is located 1700 to 200 feet from Dumping Lighthouse, and the East shore buoy is 300 feet East of the

Lighthouse. This inquiry is to ascertain whether you have on hand, can make or know where we can obtain a telephoto lens which will increase the size of the image on the plate, and whether you have a lens in stock that will cover an 8x10 plate. The movement of the boats through this passage cross your view horizontally about 1700 feet from where the camera is located, at the rate of about seven miles per hour. This would require almost an instantaneous picture" (6029).

No. 151, letter from Green July 30, 1924, to American Optical Company on same subject (6030).

No. 152, letter from Green, President of the Round Hills Radio Corporation, July 31, 1924, regarding the purchase of two Century Studio Cameras, films, etc. (6032).

No. 153, letter from Green to Harry Neyland, New Bedford, regarding preservation of the whaling ship "Charles W. Morgan," in which he says:

"I have given the matter considerable thought and have concluded that, for sentimental reasons, this particular whaler, the 'Charles W. Morgan', should be preserved, not only for the pleasure that we of the present day would derive from seeing one of the 'old timers' still with us, but as a historical heirloom for the generations to follow us. In passing, I may state that, as you are probably aware, my grandfather and others were the owners of this ship many years ago.

My understanding is that you have attempted to secure the cooperation of the City of New Bedford and its citizens in the laudable cause of preserving this ship and if it can be accomplished in this way, I shall be delighted to contribute $500.00 toward that end. If, however, the City of New Bedford and its citizens do not evidence sufficient interest in the perpetuation of her memory, I am willing to make you and her co-owners the following proposition, after, of course, giving those interested a reasonable time to decide:

If nothing is done by the City of New Bedford and its citizens, and the boat can be turned over to me by October 15th, 1924, at 12 o'clock noon, I am willing to take her over" (6033-4).

No. 155, letter from Green, October 13, 1924, to Brentano's, ordering "John Smith's Travels", containing a

chapter about Bartholomew Gosnold's Settlement at Cuttyhunk and asking them to locate a work by Gosnold (6035).

No. 156, letter from Green, October 16, 1924, to Baker and Co., New York City, ordering certain books, in which he says:

"I am endeavoring to locate some authentic history regarding the voyage made by Bartholomew Gosnold, an Englishman, in 1602. He established a colony on the island now known as Cuttyhunk, off the coast of Massachusetts. I would also like to secure any books you may have concerning old Dutch Windmills built in the United States, especially around Rhode Island and Cape Cod. Please make shipment by express to the following address" (6036-7).

No. 157, letter from Green, October 20, 1924, to Thomas Perkins, Boston, ordering certain books and etchings to be sent to Round Hills, relating to the maritime and whaling industry; also the "History of Old Dartmouth, by Ricketson" (6037), and No. 158 and No. 159, correspondence relating to the same subject (6039).

No. 160, letter from Green to William A. Mansell, Boston, October 24, 1924, regarding the purchase of a set of private signals of all whaling vessels which sailed from New Bedford (6040).

No. 161, letter from Green, October 25, 1924, ordering certain books relating to the early history of New Bedford and South Dartmouth, and full set of the House Flags of the whaling vessels, etc. (6041).

No. 162, letter from Green to Thomas Perkins, Boston, October 30, 1924, ordering a copy of book relating to Gosnold's voyage "to these shores in 1602" (6042).

No. 163, letter from Green, October 31, 1924, to Ernest Dressel North, New York City, asking him to secure a copy of the oldest dated copy obtainable of Gabriel Archer's account of Gosnold's voyage (6042), and Nos. 165, 166, 167, 168, 170 and 171 correspondence showing the purchase by Green of rare books, etchings, etc., relating to this subject, especially books relating to whaling, the early history of Massachusetts and New England genealogy (6043-50).

No. 173, copy of letter from Green, South Dartmouth, November 15, 1924, to John F. Lubben, Secretary, Dallas News, declining to subscribe to the Texas Almanac and State Industrial Guide for 1928, "inasmuch as conditions

have changed materially since 1914, I am not now in a position to take the same action I did then in regard to subscriptions for the Almanac" (6051).

Nos. 174 to 184, correspondence with Green relating to the purchase of rare books, prints, etchings, etc., relating to whaling and the early marine history of Massachusetts, New England, etc. (6051-62). In No. 183, a letter to Ernest Dressel North, December 6, 1924, Green said:

"For your information, I will say that at this time I am interested particularly in anything that relates to the history of whaling, such as old whaling lists, old Lloyd's Registers, or bound volumes of old newspapers which contain whaling lists. The museum I am establishing relates only to whaling and old Massachusetts" (6062).

No. 185, letter from Green, New York City, December 23, 1924, to the Rev. John G. Currier, Bellows Falls, Vermont, regarding inscription on the monument to his mother, enclosing check for upkeep of burial lot, in which he says:

"As you suggest, my sister and I think that the lot with the old tree would be the most preferable. Therefore, if this lot can be made or so shaped as to furnish four graves, it will be perfectly satisfactory to Mrs. Wilks and myself; or if sufficient from the lot now assigned to us can be added to the tree lot to make room for four graves, then we would have no future use for the lots now assigned to us" (6063-4).

No. 187, copy of letter from W. P. Allen, Terrell, Texas, to Green, New York City, January 9, 1925, in which he says:

"Now, as to the poll tax matter, the time is growing short and I am herewith enclosing you an order for a poll tax receipt for you and Mrs. Green, and if you want me to pay this, kindly sign and fill in and return to me, so that I will receive them on or before Jan. 31st" (6066-8).

No. 188, telegram from Green to Allen, January 16, 1925, stating:

"You failed to enclose order for poll tax receipt. Send one for myself and the Mrs." (6069-70).

No. 192, letter from Green, Star Island, to Harry Neyland, February 27, 1925, regarding the "Charles W. Morgan" (6070).

Nos. 195 and 196, correspondence in April, 1925, relating to his election to the Old Dartmouth Historical Society (6070-1).

No. 197, letter from Green, Marlin, Texas, April 27, 1925, to William M. Emery, Fall River, Mass., in which he said, among other things:

"We just arrived in Marlin and am in receipt of your letter of April 21st. I hope to get back to New York about May 23rd. They are putting me through a course of stunts here that lasts from 7:15 in the morning until after one o'clock every day, which leaves me weak and all I want to do is to sleep every afternoon. Have not been out of the hotel since our arrival. My leg and arms pain me considerably, which is due to the violent exercise and treatment they give me. This will last twenty-one days and I cannot predict whether or not I shall be better" (6072).

No. 198, letter from Green to said Emery, June 9, 1925, in which he says:

"I am in receipt of your favor of the 8th instant, enclosing the memoranda on my ancestors who rendered notable service in Massachusetts and Rhode Island in the Colonial period, for which I thank you" (6073).

Nos. 199 and 200, relating to radio broadcasting in 1925 (6073-5).

No. 201, letter from Green to Thomas Perkins, Boston, ordering miscellaneous books, etc., relating to whaling and marine history of New England (6076).

Nos. 202, 203 and 204, correspondence indicating Green's interest in Massachusetts, etc. (6077-8).

No. 205, letter from Green, May 5, 1926, Marlin, Texas, to John M. Bullard, New Bedford, regarding the taxation of his broadcasting experimental station, the "Charles W. Morgan," etc., in which he says:

"I expect to be here in Marlin for the next thirty days, or until about the time of June, when I shall start trying to migrate back to 'The Land of the Pilgrim Fathers'" (6080-2).

No. 208, letter from The Collectors Club, New York City, August 12, 1926, to Green, acknowledging his letter of August 7th and stating that the bill to him as life member

was sent through inadvertence, and the assessment was levied on resident members only (6083).

No. 209, invitation to John M. Bullard to the dedication of the Whaling Memorial July 21, 1926, signed by Green, "Life Trustee" (6084).

No. 210, letter from Green to his sister, October 8, 1926, advising her regarding investments in New York real estate, in which he said, among other things:

"You will remember that our houses at 5 and 7 West 90th Street were considered to be worth in 1870 very nearly $40,000 each, upon which we had to take a mortgage for $25,000. We had to keep the properties because we could not get the original cost price out of them. • • •

I am glad you were pleased with the Green Wing at Poughkeepsie" (6085-7).

No. 212, letter to Green, November 13, 1926, from Amelia H. Jones making an appeal for subscription to the Welfare Campaign for New Bedford's benevolent societies, and No. 213, her acknowledgment to him, November 23, 1926, of the receipt of his check for $2,000 for the New Bedford Community Fund (6087-90).

Nos. 214 and 221, letters relating to donations to New Bedford and South Dartmouth (6090).

No. 224, letter to John H. Levi, President, The Miami Ocean View Company, July 26, 1927, stating he was tied up with building an airport on Buzzard's Bay and putting all his loose cash in that; therefore could not consider purchasing additional lots on Star Island (6092).

No. 226, letter to John M. Bullard, South Dartmouth, August 17, 1927, from Harry A. Bennett reporting that the Board of Selectmen, at their regular meeting August 5th, recorded themselves in favor of the landing field and airport Green contemplated constructing at Round Hills, etc. (6092-3).

No. 227, certificate dated September 12, 1927, that Edward H. R. Green of Terrell, Texas, is entitled to 50 shares of the West Shore Trust, signed, among others, by Charles S. Ashley, New Bedford, Mass. September 12, 1927 (6094).

No. 229, life membership card issued to Green in the New Bedford Port Society for The Moral Improvement of Seamen (6095).

No. 230, member's ticket issued to Green 1931, New Bedford Yacht Club.

No. 231, receipt dated Boston, Mass., August 4, 1927, to Green for $1,000 given by him to the U. S. Junior Nautical Training Schools, Inc., and No. 231-A, letter to Green, October 26, 1927, expressing their appreciation of his membership, etc. (6096-7).

No. 232, paid bill of the Wamsutta Club, New Bedford, Massachusetts, for dues to March 1, 1933 (6097-8).

No. 240, letter from Green, May 17, 1928, to Henry Chapman, Philadelphia, Pa., in which he says:

"I am leaving here in a few days for New York, but during my short stay there will not have time to go into anything in the Numismatic line. I am sending all your shipments direct to South Dartmouth, where I shall be after July 1st, and will then be in a position to go over everything you have sent me" (6098).

No. 241, letter from W. P. Allen, Terrell, Texas, May 19, 1928, to Green stating:

"I have been expecting you down in Marlin for the last month, but the time is so late I don't think you are coming this year.

* * * * * * *

The Midland passed into the hands of the Southern Pacific on April 1st; * * *

I am enclosing you a coin that a mutual friend of ours 'Kirby Orr' gave me yesterday to send to you. I presume that it is the work of some artist, but whenever I see a strange coin I think of you.

If I had known you were not coming to Texas I would have run down and spent the week end with you, but I hope to get up to see you this summer and see how the airport is coming along. The new owners of the Midland elected you President, and much to my surprise elected me Vice President, so I guess I can still ride free" (6099-6103).

and No. 242, Green's reply of May 23, 1928, in which he says:

"I received your letter of the 19th and enjoyed it. * * *

We are leaving for New York tomorrow and I will be at the Waldorf until July 1st" (6105-6).

No. 243, letter, June 11, 1928, from Green to William M. Emery, Transcript Office, Boston, reading:

"I am this morning in receipt of a very good photograph of the old Gideon Howland House in New Bedford from you, for which please accept my sincere thanks" (6106).

Nos. 244 and 245, correspondence between Green and John M. Bullard, New Bedford, July 24-25, 1928, regarding changing the annual meeting of Whaling Enshrined Incorporated to July 21st, the birthday of the old whaler (6107-8).

No. 246, letter from Miss Elizabeth Watson, New Bedford, August 28, 1928, to Green regarding the negative of a picture of his mother at the Old Dartmouth Historical Society, in which she said:

"I also have a negative of the Edward Mott Robinson house on 2d St. South of the Custom House. It, as of course you know, became eventually The Germania House and then was *naturalized* and was the 'American House.' This sign is on the door in my picture. The whole front of the house is now cut off by buildings added to it. Would you care for this? If it would accommodate you, I am always so happy when I can help any one who is interested in Old New Bedford and its people. I was glad that I had the negative of The Gideon Howland house which Mr. Emery had printed for you. Please let me know if you care to use my negative" (6109-10).

and No. 247, Green's reply of September 6, 1928, reading:

"Please accept my sincere thanks for your letter of August 28th. I am very much interested in any negative you may have of my mother or any house in which she or her father, Edward Mott Robinson, lived. If you will be so good as to loan such negatives as you may have to me, I will send them to New York and have an expert make copies, returning to you immediately the negatives with copies for yourself" (6110).

No. 248, letters from Miss Watson to Green relating to same subject (6111).

No. 249 inscription on picture of house of Isaac Howland, Sr. belonging to Miss Watson:

"The house originally faced Union Street where the entrance was. The rear part and flight of steps were added when the house was changed. Also the east addition. A pre-revolutionary house.

This picture was loaned to me to copy by the Ashmead Bartlett Family in Brooklyn, with your mother's permission. Mr. Geo. F. Bartlett asked them for it for me.

* * * * * * *

I have understood from people of your mother's age that this house was the scene of many delightful social functions which they attended.

The house stands next south of the Custom House.

* * * * * * *

Mr. Geo. F. Bartlett and Mr. F. H. Hooper both told me that your mother said to them once, as they were talking together, 'People think I was born in the stone house on Pleasant Street, but I was born in the Capt. Merrill house'. A friend of mine now living said that when Capt. Merrill bought the house he told his wife, 'This is the house Hetty Robinson was born in'. My friend heard this as a girl" (6112-13).

No. 250, Green's letter of acknowledgment to Miss Watson, September 15, 1928, reading:

"It was very good of you to send me the negatives and I am sending them on to New York to have reproductions made. It will give me a great deal of pleasure to see that you have a complete set of pictures for yourself, and you may be assured I shall return the negatives to you in good condition after the pictures have been made" (6113).

No. 251, telegram from Green, September 17, 1928, to President of Wellesley College regarding the education of Miss Eugenia Corley, in which he says, "I don't want her to go to a Southern college" (6114).

No. 252, letter from Green, September 17, 1928, to Herbert & Huesgen Co., New York City, asking them to make the best enlargement they can of old negatives, including one of his mother (6115).

Nos. 253, 254, 255 and 256, paid bills McNally Transfer Company, Inc., New York City, November, 1928, for packing articles shipped to Round Hills, South Dartmouth (6115-17).

No. 259, agreement between Green, of Terrell, Texas, and Charles M. Carroll, of New Bedford, December 13, 1928,

to secure advancements made by Green for taxes and development of Barnard Estate of 160 acres at Mattapoisett, Massachusetts (6117-20).

No. 260, letter to Mrs. Helen B. Prescott, New Bedford, enclosing check for $1,000 and stating, "My favorite charity is the hospital" (6121).

No. 263, letter from Harry Neyland, New Bedford, to Green, April 7, 1929, in which he says:

"We have cornered the market on fog. In fact we have the worlds supply and none can be purchased elsewhere. If you need any in order to continue your experiments while in the sunny South your orders will receive our prompt attention.

• • • • • • •

Many men and teams are busy working on your airport. Your Captain and your crew are busy fitting out your ship and your many friends are eagerly awaiting your return" (6121-2).

No. 266, agreement between The Miami Aircraft Corporation, of Miami, Florida, and Green, "of Round Hill, South Dartmouth, Mass.," August 14, 1929, for seaplane (6123-4).

No. 267, agreement, September 5, 1929, between the Standard Oil Company of New York and Green, "of Round Hills, South Dartmouth, Mass.," for purchase of oil, installation of storage facilities at South Dartmouth, etc. (6124).

No. 268, letter to Green, September 12, 1929, from C. F. Chapman, Editor of "Motor Boating," regarding making a new trophy, to be known as the Round Hills Trophy, to be a replica of the Star Island Trophy made by Caldwell and Company, Philadelphia (6130-1).

No. 271, agreement with Green, "of Dartmouth in the County of Bristol and Commonwealth of Massachusetts," October 26, 1929, for the construction of a diner to be located at Round Hills for the employees of the airport (6131-3).

No. 272, letter from the War Department, W. J. Barden, Colonel, Corps of Engineers, Division Engineer, to Green, South Dartmouth, Mass., November 2, 1929, regarding the construction of a launchway in Buzzards Bay near Round Hills (6134).

Nos. 273 and 274, copies of telegrams between Green and T. E. Corley, Dallas, Texas, relating to the sale of the Terrell Company, November 12, 1929 (6138).

No. 276, agreement, November 20, 1929, between Green, of Round Hill, South Dartmouth, Massachusetts, and Standard Oil Company of New York for the storage and handling of petroleum products at South Dartmouth (6139-44).

No. 280, letter from Green, March 6, 1930, to James K. Donaghy, New Bedford, regarding "restaurant concession at Round Hill" (see Ex. No. 271) (6145).

No. 289, letter from Green, Sherry-Netherland Hotel, New York City, June 19, 1930, to W. P. Allen, Terrell, Texas, in which he says:

"I don't believe I have experienced such hot weather as we are having in New York now in many years and we are getting ready to go up to Round Hill, where I hope it will be more pleasant" (6145-6).

No. 292, contract, July 22, 1930, between Tarello Tile Company, New Bedford, and Green, of Round Hills, Massachusetts, for removal of floor and installation of new tile floor in open terrace at the residence of E. H. R. Green, Round Hills, Massachusetts, contract price $13,819 (6147-50).

No. 293, contract, July 23, 1930, between Artesian Well and Supply Company, Providence, Rhode Island, and Green, South Dartmouth, Massachusetts, for a drill well on the premises of the owner at South Dartmouth (6150-3).

No. 294, August 25, 1930, and No. 295, September 19, 1930, contracts between same parties for drill well on same premises (6153-6).

Nos. 296 and 297, correspondence, September 25-27, 1930, between New Bedford Times and Green for the loan of three amplifiers for the broadcast of the World Series Baseball Games from October 1st to 8th (6159).

No. 298, letter from Green, October 20, 1930, to D. C. Wismer, Hatfield, Pa., enclosing check for National Bank Notes purchased in which he says:

"The doctor has ordered me out of this climate immediately, so as soon as arrangements can be concluded it is my intention to go to Lake Placid, N. Y. for awhile;

therefore, please do not send anything more to me here" (6160).

No. 299, letter from Green, October 20, 1930, to George H. Blake, Jersey City, New Jersey, enclosing check for National Bank Notes purchased and containing the same statement as in No. 298 regarding his departure (6161).

No. 300, letter from Green, Grove Park Inn, Asheville, N. C., November 7, 1930, to Chief of the Airport Section, Aeronautics Branch, Department of Commerce, Washington, in which he says:

"I beg to say that Round Hill Airport occupies about 79 acres of my private estate in South Dartmouth, Mass. Before the airport was built this entire acreage was a marsh, and a fair valuation at that time would have been $1,000 per acre. However, in order to secure the results I sought, it was necessary to fill it all in with sand pumped from Buzzard's Bay and then top with soil hauled by trucks from the surrounding country, in order to provide a sodded airport, which it now is. This was a very expensive job and today a conservative estimate of the value of this 79 acres would be $5,000 per acre, or $395,000.00" (6161-2).

No. 301, contract, November 17, 1930, between Artesian Well and Supply Company, of Providence, R. I., and Green, "of South Dartmouth, Mass.," for drilling a well on his property at Round Hills, and No. 302, letter from said contractor, and No. 303, letter of Green's secretary from Asheville, North Carolina, November 19, 1930, enclosing his check to said Company for $4,900 (6162-5-6).

No. 305, letter from W. P. Allen, Terrell, Texas, March 1, 1931, to Green, reading:

"It has been some time since I have had a letter from you, but I had one a few days ago from Dr. Buie, and was glad indeed to hear from you through him.

From what he wrote me I infer that you had not at that time definitely made up your mind as to whether you were going to come to Marlin this spring" (6166-7).

No. 306, letter from W. P. Allen, Terrell, Texas, April 9, 1931, to Green (describing East Texas oil field):

"When I received your last letter, I had my grip about ready to pack, and come down there, but upon receipt of

same I came to the conclusion that you were going to be in Marlin about May 1st, although you did not say so.

So Dr. Buie and I are expecting you about that time, and hope our guess is not wrong" (6167-8).

No. 307, letter from Green, April 13, 1931, to said Allen, reading:

"I was glad to receive your letter of April 9th. I note what you say about my going to Marlin, but can only say that I do not know even yet where we are going. Of course, if Marlin is finally decided upon I shall be glad to see you there and allow you to get off of your mind what seems to be troubling it. I can very well imagine that you have simply been itching to get down there in that new oil field, and you are to be congratulated that you have not permitted yourself to be swept off your feet" (6169-70).

No. 309, letter July 7, 1931, to Green from State Reclamation Board of Massachusetts regarding the elimination of mosquitoes in the vicinity of Round Hills and asking a contribution (6170-2).

No. 310, letter of Green, July 8, 1931, in reply enclosing his check for $500 as a donation towards the work (6173).

No. 311, letter of Green, July 29, 1931, to The American Numismatic Association, Chicago, Illinois, enclosing check for dues and subscription to The Numismatist, to be sent to him at Round Hill House, South Dartmouth, Mass. and 46 Star Island, Miami Beach, Fla. (6173-4).

No. 314, letter from Green, August 24, 1931, to W. P. Allen, Trustee, Terrell Trust, asking that checks be issued for $1200 each for Mary Frances Cammack, Margaret McElroy and Eileen Stephenson (6174), and No. 315, Allen's reply transmitting checks, August 28, 1931 (6175).

No. 316, letter from Green to Lorne K. Smith, Toronto, Canada, September 4, 1931, transmitting medallion commemorative of his visit to the "Charles W. Morgan," in which he said:

"It is a source of considerable gratification to me to know that my efforts to preserve for posterity evidences of some of the things which have helped to make our country the greatest on earth have not been in vain" (6176).

No. 318, letter from Norman Seaver Swan, New York City, to Green, March 1, 1932, requesting an interview re-

garding commercial aviation, and No. 319, Green's reply, March 4, 1932, in which he says:

"I shall be glad to see and have a chat with you when I return to New York, which will probably be in the early part of June, and renew the friendship which existed between our families. While in New York we live at the Sherry-Netherland and you might call up there sometime in June and make an appointment" (6177-8).

No. 320, letter May 16, 1932, from Green, Miami, Florida, to Captain Albert L. Edson, East Boston Airport, expressing regret at the death of Lt. Robert L. O'Brien and enclosing check for $500 for the fund being raised for the education of young "Bobbie" (6178-9).

No. 321, letter June 3, 1932, from the National Cyclopedia of American Biography to Green relating to publishing a biography of his grandfather, Edward Mott Robinson, and No. 322, Green's reply referring them for information to "The Howland Heirs" prepared by direction of the Court by Emery, genealogist, for the Sylvia Ann Howland Trustees in order to ascertain the legal heirs of Sylvia Ann Howland and enclosing an extract from the book, Ex. No. 322-A (6180-88).

No. 323, letter from the President of the Texas and New Orleans Railroad Company, July 16, 1932, suggesting his resignation as a Director, and No. 324, Green's reply submitting his resignation (6188-90).

No. 325, letter from the President of the Railroad Company thanking him for the resignation (6191).

No. 326, letter to Green, July 23, 1932, from Island Airways, Inc., thanking him for the use of the splendid airport and seaplane facilities at Round Hills (6192).

No. 333, letter from Green, Lake Placid Club, to W. P. Allen, Terrell, Texas, December 12, 1932, in which he says:

"Upon instructions of my doctor I have been up here at Lake Placid for the past seven weeks and I think the invigorating climate has benefitted me considerably. It has been snowing steadily for two days and everything around here looks beautiful.

We are leaving for New York in a few days, where I shall be at the Sherry-Netherland, 5th Avenue and 59th Street, until after the first of the year, and then on to Miami Beach for a few months" (6194).

No. 338, letter from Green, Star Island, Florida, February 17, 1933, to Harry Neyland, New Bedford, authorizing the purchase of new sails for the "Morgan" and of a whale's jaw, in which he says, "The weather here is as near perfect as one could expect to find and my general condition seems to be improving with the change" (6195).

No. 343, letter from the Corresponding Secretary of The Society For The Preservation of New England Antiquities, Inc., Boston, March 15, 1934, to Green, Star Island, Florida, thanking him for the pamphlets on Round Hill Mill by Emery (6196).

No. 345, letter of Green's secretary to Neyland, October 11, 1934, asking for a list of "all the boys who are coming, in order medals may be ready to hand to them while they are aboard the ship" (6196-7).

No. 346, letter to Green, New York City, January 29, 1935, from the Secretary of the Southern Pacific Company asking return of the passes issued to Colonel and Mrs. Green on account of the Texas Midland Railroad, dissolved (6197-8), and No. 347, Green's reply, February 2, 1935, complying with his request (6198).

No. 348, letter from Dr. Buie to W. P. Allen, April 13, 1935, asking him to get Green to come back to Marlin, Texas, on his way from Miami Beach (6199), and letter from Allen to Green, Star Island, April 29, 1935, enclosing Dr. Buie's letter, stating they would be delighted to have him come to Marlin "and spend a month on your way home" Ex. No. 349 (6200).

No. 350, telegram from Green, Miami Beach, May 7, 1935, to Henry Chapman, Philadelphia, Pa., reading:

"Effective at once and until further advice my address will be Falls Hotel, Marlin, Texas. Do not send any coins there, as am not taking collection. Only low numbered National Bank bills interest me while there" (6201).

No. 351, letter from Green, July 12, 1935, to The Lantern League of the Old North Church, Boston, accepting invitation to become a Lantern Bearer and enclosing $250 donation (6201).

No. 352, letter from W. P. Allen, Terrell, Texas, July 24, 1935, to Green, South Dartmouth, enclosing check as requested on Terrell Trust for $1,000 for Eileen Stephenson, in which he says:

"I enjoyed my short visit with you on the train from Terrell to Marshall and to be perfectly frank with you, you looked a whole lot better than I expected to see you. To be perfectly frank with you, Dr. Buie and I had a lot of correspondence before you came here and I wrote him, as I wrote you, that the only way he could ever get you up here was to promise you that you would not be warted by anybody in Texas, especially me, and I am glad that he carried out these instructions. I had a letter from him a few days ago in which he told me that you had been going to town since you got back to Round Hills and he told me that you had made a marked improvement since he was there and I would not be surprised if you do not outlive all of us" (6202).

No. 355, invitation from The Massachusetts Institute of Technology to Colonel E. H. R. Green to visit the Research Laboratories at Round Hills, South Dartmouth, Saturday, November 23, 1935—Program of Research on Fog Including the Problem of Its Dissipation (6203-6).

No. 357, certificate of George H. Sheppard, Comptroller of Public Accounts, State of Texas, regarding examination of the Tax Rolls of Dallas County, Texas, with reference to poll tax assessment of Green in said County from 1893 to 1907, inclusive, showing no poll tax assessment on regular roll in these years (6206-8).

No. 358, certificate of same official showing poll tax collected from Green for the years 1907, 1908 and 1909 in Kaufman County, Texas (6208-9).

No. 359, certificate of same official showing poll tax assessment against Green, Kaufman County, Texas, for the years 1893 to 1907, inclusive, showing no poll tax assessed on regular assessment rolls in those years, in 1908 an assessment of $1.75 and in 1909, $1.75 (6209-10).

No. 360, certificate of same official that an examination of the monthly reports filed by the Tax Collectors of Dallas County in the years 1893 to 1907, inclusive, did not show any poll tax payments in the name of Green (6210).

No. 361, certificate of same official that an examination of the monthly reports of the Tax Collectors, Kaufman County, Texas, showed payment of poll taxes by Green for the year 1907 (6211).

No. 362, certificate of Mrs. Walter Beard, Assessor and Collector of Texas, Kaufman County, Texas, in custody

of the records of the assessment of real and personal property in said County for the years 1910 to 1936, both inclusive, stating that the schedule attached shows in full the assessment made against the property of E. H. R. Green for the respective years therein set forth (6212-15).

(The attached schedule shows the assessment of 50 Bank shares from 1910 to 1914, inclusive, and 100 Bank shares from 1915 to 1936, inclusive.)

No. 363, certificate amending by-laws of Whaling Enshrined, Incorporated, and fixing July 21st of each year, the date on which the "Charles W. Morgan" was launched in 1841, for the annual meeting (6215).

No. 364, certified copy of extract from first meeting of the Incorporators of Whaling Enshrined, Incorporated, held August 6, 1935, designating, among other life members, E. H. R. Green (6216).

No. 365, statement of account of Green with The American National Bank, Terrell, Texas, from December 31, 1910 to November 20, 1914 (6219-22), showing that his average balances gradually declined to nothing.

No. 366, inscription on memorial:

"Dedicated To The Memory Of Hetty Howland Robinson Green. November 21, 1834—July 3, 1916. By Her Son Edward Howland Robinson Green, 1920" (6222).

No. 367, application for life membership in the Massachusetts Society of the Sons of the American Revolution by Edward Howland Robinson Green, "descendant of Colonel David Mosley, who was born in Westfield, Mass. on the — day of —— 1735" (6223-6), giving Green's family history and his residence, South Dartmouth, Massachusetts (6224).

No. 368, certificate of Green's membership in the Massachusetts Society of the Sons of the American Revolution, dated November 14, 1924 (6229).

No. 369, Green's application for membership in the Society of Colonial Wars by right of descent from William Robinson, Deputy Governor of Rhode Island, giving the address, Round Hills House, South Dartmouth, Mass., and supporting affidavit on the family history (6229-35).

No. 370, certificate of life membership in the Massachusetts Horticultural Society (6236).

No. 371, certificate of active membership in the American Numismatic Association, giving the address, Round Hill House, South Dartmouth, Mass., and No. 372, membership card (6236-7).

No. 374, plats of Round Hills Airport and Round Hills Research Division of the Massachusetts Institute of Technology (6237).

No. 375, photograph of the Howland Coat of Arms, No. 377, photograph of the Captains of the Stone Fleet and No. 378, photograph of private signals of whaling vessels (6238).

No. 379, statement of Massachusetts Institute of Technology of facilities, funds, operating expense and allocation of staff for the Round Hills work, 1932-33 (6239); facilities furnished by Colonel Green (6240) and funds supplied by him, aggregating $45,572.75 (6241-2).

No. 380, copy of "Old South Leaflets, No. 120"—Gosnold's Settlement at Cuttyhunk (6252-73).

No. 381, license September 16, 1919, Commission on Waterways and Public Lands to Green to build and maintain a marine railway in the Town of Dartmouth (6274).

No. 382, license dated August 17, 1921, from Department of Public Works to Green to build a platform and wharf at Round Hills in Buzzards Bay, Dartmouth (6276).

No. 383, license dated October 28, 1921, from the Department of Public Works to Green to build a pile wharf and drive piles in Buzzards Bay, Dartmouth (6279).

No. 384, license dated November 20, 1924, from the Department of Public Works to Green to build bulkhead, fill and dredge in Buzzards Bay, Dartmouth (6282).

No. 385, license November 12, 1925, from the Department of Public Works to Green to build sea wall and fill in Buzzards Bay, Dartmouth (6285).

No. 386, license December 9, 1926, from Department of Public Works to Green to build a pile pier and riprap in Buzzards Bay, Dartmouth (6287).

No. 387, license August 24, 1927, from Department of Public Works to Green to dredge and to fill in certain tidal tributaries in Dartmouth (6290).

No. 388, license September 20, 1927, Department of Public Works to Green to build timber culvert, etc., Buzzards Bay, Dartmouth (6293).

No. 389, license December 27, 1927, Department of Public Works to Green to construct and maintain two dolphins and to remove rocks in Buzzards Bay, Dartmouth (6295).

No. 390, license September 17, 1929, Department of Public Works to Green to build and maintain launchway for seaplanes in Buzzards Bay, Dartmouth (6297).

All of the aforesaid licenses recited that the applicant, E. H. R. Green, was "of Terrell, State of Texas."

No. 391, certificate of incorporation of Whaling Enshrined, August 26, 1925 (6300).

No. 392, certificate of incorporation of Round Hills Radio Corporation, June 28, 1922 (6302).

EILEEN STEPHENSON, of New York City, testified that she occupied a secretarial position with a firm of New York attorneys and was born in New Bedford in 1915; had known Colonel Green since she was fourteen years old, having met him outside of Kelleher's Drug Store in New Bedford while on her way to school (6305-7); he saw her playing and wanted to know how old she was, where she was going to school and what she wanted to do when she grew up; she would talk with him every day she saw him and he bought her costume jewelry and asked Mrs. Green to have her down to Round Hills for a week end; in both 1929 and 1930 made occasional visits to Round Hills (6308); Green had her sent to the "House in the Pines," a private boarding school at Newton, Massachusetts, to prepare young girls for college; she entered there September, 1930, and graduated in 1934 (6309); from 1931 on, she would often go down to Round Hills in June and spend the rest of the Summer, until two weeks prior to returning to school in October; during the first three years of her acquaintance with Green and visits to Round Hills, he was happy and jolly and always joking (6310); when she was first there, he would come down to breakfast and sometimes Mary Frances Cammack and Margaret McElroy were there—other protegees of his; after that he would go to New Bedford and come back for lunch with them and afterwards the witness would go up to town with him in the car; before she got her car, she went with him frequently in the afternoon; his first stop was Kelleher's Drug Store, where he bought bromo-seltzer and then purchased supplies for his stamp and coin collections, etc. (6311); when the cellophane plates came out he would buy them and tell her in the evening how to work them; on his way home he took a road that passed a place where they

had goats and he used to stay in the car and let Stella, the dog, chase the goats, then park on the ramp for awhile in his place and then go to his room; on Sunday afternoon, he would take witness down and sit on the ramp all afternoon; the people would crowd around and talk; this was in 1931, 1932 and 1933; in the evening they would have dinner, which was quite an affair, and Mrs. Green, "Uncle Ned," the other girls and witness would be at the table. Occasionally Mr. and Mrs. Bartlett, of New Bedford, or Mrs. Nicholson and Dorothy Nicholson, a neighbor, would be there (6312-14); after dinner they would go to the library and talk and there was a slot machine in the library and Green would give them nickels and they would play an hour or so, after which he would go upstairs and witness would follow and work with him on his stamps, sometimes on coins; in 1930 and 1931, her recollection is that he was working on coins (6315); the latter part of the time she was there he took up stamps; he would start about eight o'clock at his desk and sit there until ten, when the man would bring up a luncheon of crackers and milk, or something of that sort; after that he would listen to the news on the radio and sometimes to a program and then go back to his stamps until 12:30 or one o'clock; Mrs. Green would come in often and ask if she could help him (6317); after 1933, there was a change in his condition, he didn't seem to have much ambition, never laughed as much as he used to do; his only interest then seemed to be his stamp collection and it seemed as if he wanted to get that completed (6318); he continued to go to town unless he was very sick; in the later years, witness had her own car and did not go with him; shortly after she was sixteen and qualified to drive, he gave her a Ford Roadster (6318); also made her other gifts—diamond ring, diamond bracelet, a string of pearls, etc., two shares of Chase National Bank stock and money, besides paying for her education; when she graduated from the "House in the Pines," she went to the Boston University in September, 1934, where he paid her expenses, and was a student there at the time of his death; he was very kind to her up to the very end (6319-20). On cross-examination by counsel for Texas, witness testified that Virginia Dare, Margaret McElroy and Mary Cammack, who were visitors at Round Hills, were all from Texas and witness was known as the only Massachusetts ward of the Colonel (6322-3); she often heard the Colonel say that he was by

birth an Englishman, by education a Catholic, in business a Jew and by residence a Texan (6323); during all the time she knew Green he was not able to walk much and the other members of the family were concerned about his health and opposed to him taking bromo-seltzer; that witness promised not to tell Mrs. Green he was taking it (6323-4). On cross-examination by counsel for Florida, she testified that from 1931, as his interest in things on the outside seemed to wane, he gave more attention to his stamps and things on the inside (6325).

On cross-examination by counsel for New York, witness testified that Green did not indicate any preference for the selection of a school in Massachusetts until she got to college, and left it to her (6327); she left the Boston University because she could not afford to attend (6329).

On redirect examination by counsel for Massachusetts, the witness testified that Green wanted her to attend the Remington-Rand School in Boston, a secretarial school, and afterwards decided it was all right for her to go to the Boston University (6329-30).

Wilbur K. Potter, recalled, identified Green's signature to Mass. Ex. No. 356, Massachusetts vehicle registrations for various cars, which was given in evidence (6333).

At the hearing at New Bedford, Massachusetts, February 1, 1938, counsel for Massachusetts gave evidence by the following witnesses tending to prove:

Raymond McLeod, of New Bedford, testified that he was an attorney at law and title examiner with the firm of Crapo, Clifford, Prescott and Bullard; that he had made a search of the titles to the Round Hills property to determine the lines of descent and the history of the additional lands acquired by Green in his lifetime and prepared a chart "Round Hills Farm," Mass. Ex. No. 413 (6343); that the original deed was in 1652 from the Indians to William Bradford and his colleagues and took in the entire property; the part indicated in yellow on the chart was set apart to Howland in 1712 and the portion indicated in green on the chart has been in the Howland family during this en-

tire period and with the exception of fifteen years from 1826 to 1841, it was in the direct ancestors of Colonel Green and since then has been in a direct line of descent; at the death of Mrs. Hetty Green in 1916, it went to Colonel Green and his sister in undivided halves by device under her Will; the acreage they obtained was about 75 acres (6341-7); that was the acreage upon which the Round Hills mansion rests (6348); that Mass. Ex. No. 66 is a description from a deed by the Trustees under the Will of Sylvia Ann Howland to Hetty Green, dated January 3, 1882, and recorded May 8, 1886 (6348).

Witness identified Mass. Ex. No. 414 as a copy of a deed to Green, of Terrell, Texas, from Gideon K. and Joseph Howland, of Dartmouth, Massachusetts, dated March 20, 1918, of a tract of 75 acres known as the Stephen Howland Farm (6350-4); that the tract thereby conveyed is indicated on the chart, Ex. No. 413, in red and takes in the tracts in lavender and also two interior parcels marked in pencil (6354); that Mass. Ex. No. 415 is a deed from Edward Howland to Green, of Terrell, Texas, July 26, 1919, of a parcel of land in Dartmouth east of the Smith's Neck Road, containing about fifteen acres (6356-9) and is designated on the chart, Ex. No. 413, in pencil west of the Stephen Howland Farm and referred to as the John Howland Farm (6359); that Mass. Ex. No. 416 is a deed from Charles W. Howland and William B. Collins, of Dartmouth, dated July 10, 1925, to Green, of Terrell, Texas, containing over four acres, designated on the chart, Ex. No. 413, in white, marked "Charles W. Howland and Collins," bordering on the creek between the Stephen Howland Farm and the Round Hills Farm (6360-2); that Mass. Ex. No. 417 is a deed from Otis S. Cook, of New Bedford, to Green, of Terrell, Texas, August 15, 1927, of a tract of about four acres, designated on the chart "Robert W. Swift," who sold to Cook (6363-5).

Witness further testified that apart from the grant of a building for Whaling Enshrined, there were no grants out of Colonel Green of the land conveyed to him (6368).

On cross-examination by counsel for New York, the witness testified that the title to the original Howland Farm is now in Mrs. Wilks; the Will has not been probated in Massachusetts; in the record it would be one-half in the Colonel and one-half in Mrs. Wilks, as far as Massachusetts is concerned (6370); they received undivided halves at the time of the death of Mrs. Hetty Green (6371).

In response to questions by counsel for Massachusetts, witness further testified that the acreage of the entire tract inherited plus that acquired about 150 (6371); subsequently witness corrected this to 270 acres—130 for Round Hills and 140 purchased (6561).

SAMUEL S. PECKHAM, of New Bedford, testified that he was born in 1873 on the Green Farm, South Dartmouth, and lived in the old original house, over 200 years old at that time; his father and mother sometimes took boarders and Mrs. Hetty Green and her two children boarded with them in 1882 or 1883; her husband was there for a short time the two Summers they boarded with them; they stayed there from six to eight weeks each Summer; the children's names were Ned and Sylvia; Ned played with witness around the farm most of the time (6372-4).

On cross-examination by counsel for Texas, he testified that he can not say whether they returned because he moved away and did not see anything of Green in manhood (6375-6), and in response to further questions by counsel for Massachusetts, testified that the original Howland house is the one now preserved as a relic (6378).

WILLIAM M. EMERY, of New Bedford, testified that he was a writer on genealogical, biographical and historical research and had been associated with the New Bedford and Fall River Papers and Boston Transcript for many years; that he was the author of the book called "The Howland Heirs", a story of the family, fortune and inheritance of a trust established for Mrs. Hetty Green, and had been employed as a genealogist by the Trustees of the Sylvia Ann Howland Trust (6380); that Colonel Green was the ninth in descent from Henry Howland, who was the first pioneer of that line to come to America (6382); that Green was not a descendant of any of the passengers on the Mayflower, so far as he could ascertain; Henry Howland did not come in the "Mayflower" but in the "Ann" or "Fortune" in 1621 or 1623 (6382-83); that witness first personal contact with Green was in 1921 at Round Hills (6383-5); that Green talked with him about his interest in the history of the Round Hills Farm and his ancestors and said he contemplated making

a historical or ancestral spot and wished witness to be the historian and write him a series of articles in connection with the various phases of the Round Hills Farm and the occupants (6384); witness did this and turned the matter over to Green; the first was a story of the visit of Bartholomew Gosnold, an explorer who came from the Island of Cuttyhunk and visited there in 1602 (6384); that Green frequently talked of this and at one time had the intention of erecting a tablet to the memory of Bartholomew Gosnold's visit, the next monograph was a general history of the Round Hills Farm and its occupants, and subsequently the story of the old windmill which stands on the ground; in 1924, Green had purchased it from the descendants of a Rhode Island family and set it up at Round Hills; Green paid witness for all of this work and discussed with him the preparation of other treatises which he never completed pertaining to the history of Round Hills and the whaling industry (6385-6); Green expressed the deepest interest in the whaling industry in which his ancestors had engaged and wished to acquire all kinds of objects relating to it and early in their acquaintance spoke of acquiring a library pertaining to that industry, history and genealogy; he showed the deepest interest in this matter and asked witness' advice about getting certain books over a period of years; that witness examined the Green library and prepared a list of the books relating to whaling and local matters, which was given in evidence as Mass. No. 418 (6388); that some of these books were source books and great authorities on the subject; he found no books relating to Texas or Florida history in the collection, but there was an ancient book relating to the Province of New York (6394); that witness prepared the data for Green submitted with his application for membership in the Massachusetts Society of the Sons of the American Revolution, Mass. Ex. No. 367; at the conclusion of the statement, his residence is given as South Dartmouth, Massachusetts; that witness obtained this information as to his residence from Colonel Green (6398); that some of the information was supplied by Green and some of it the witness obtained from records and genealogical sources (6399); that the affidavit to the application was signed by Green October 27, 1924, before a Notary Public (6401).

Witness also prepared the statement for his application for membership in the Society of Colonial Wars, which is

signed and sworn to by Green and the address given Round Hills House, South Dartmouth, Massachusetts; th information concerning residence was given to the witne by Green—Mass. Ex. No. 369 (6402-4).

Witness also identified Mass. Ex. No. 368 as a photograp of the certificate of Green's membership in the Massachu setts Society of the Sons of the American Revolution, whic hangs in the Round Hills House (6405).

Witness further testified that there was also a photo graph-picture of St. Joseph's Convent at Pleasant Street New Bedford, hanging in the Round Hills House, whic Green told him on one occasion, before he ever came t live there, he and his mother were visiting New Bedford drove up Pleasant Street, passed this house and she pointed to a window in one of the upper stories and said, "Ned, that window is in the room where your mother was born;" it was a large stone mansion built about 1830 and is still standing (6406); Green told him he intended to establish a whaling museum and was going to have a collection of rare coins there and this would be the final resting place of his historical and genealogical library; there was a cellar dug for the museum near the "Morgan" which remained open for some time and was afterwards filled up and Green said he had plans prepared by a New Bedford architect for a building; witness is familiar with the old blacksmith shop and old candle works that Green bought and had re-constructed to show the history of the whaling industry; the foundation for the museum was not very far away (6408-9); Green said he was very much pleased to have the public use his grounds and he regarded the money left him by his mother as a sort of informal trust and she would be very glad to have him spend it as he pleased and glad to know that he spent it for the benefit of the public, and he felt he would like to spend it for the benefit of the public on his estate and welcome the public there; that on one Sunday afternoon witness recalls a man in the crowd addressed Green and thanked him for all he had done for the public; Green told witness he got a great kick out of that sort of thing and felt very much pleased that any one acknowledged their indebtedness to him for what he had done to please the public and seemed enthusiastic about the attitude of the public towards his place (6409-10).

Witness identified Mass. Ex. No. 243, letter from Green to him relating to a photograph of the old Gideon Howland

house in New Bedford, the home of Hetty Green's grandfather, where she spent much of her girlhood, and he set great store by it due to the family associations (6413); that Mass. Ex. No. 284, a letter from Green, April 24, 1930, to witness related to a book by Boyd and Sparks, about Green's mother, which witness had reviewed and criticized for the Boston Transcript, receiving some letters of commendation from people for his attitude who did not approve of the book, he sent them to the Colonel and this was his response (6414); that Mass. Ex. No. 343, a letter dated March 15, 1934, from William S. Appleton, Corresponding Secretary of the Society for the Preservation of New England Antiquities, has reference to his pamphlet on the windmill (6414); that Mass. Ex. No. 366 is a photograph of the tablet in the rooms of the New England Historical and Genealogical Society in Boston to the memory of Hetty Howland Robinson Green by her son (6415).

Witness further testified that Green never gave him any indication of his intention to give up or move away from Round Hills (6416). On cross-examination by counsel for Texas, he testified that in his book "The Howland Heirs" Colonel Edward H. R. Green was given as one of the Trustees, with address, 111 Broadway, New York City; that was prior to the erection of the Round Hills mansion (6417); that the article on Green in this book was prepared from newspaper articles about him and not from Green, with whom he was not personally acquainted at that time; the facts all came from the newspapers (6418-19, 6422).

On cross-examination by counsel for Florida, witness testified his first interview with Green was in 1921 and most of his interviews were devoted to discussing work that Green had assigned or the witness had suggested, for which Green fixed the compensation (6432-3); that the windmill was brought from Rhode Island, because he could not find one in Dartmouth, to show what they had in his ancestors' day and create this atmosphere of antiquity at Round Hills, upon which the place is built; that about 90% of the pictures there relate to whaling activities and in front of the house are masts from old ships; that the whaling ship is in front of the house and there are hundreds of feet of great chains around the grounds (6434-6).

On cross-examination by counsel for New York, he testified that in the Fall of 1925, he had a talk with Green in which he informed him that the next Summer he expected to be

very busy with his sister and lawyers in New York in
settlement of his mother's trust which was for ten ye
and was expiring the Summer of 1926; and he stated t
he and his sister would have to agree on the disposition
the mansion which, he informed me, being on land ow
by them jointly and undivided gave her the title to half
the house, and he said at the time that he would like
have it for some sort of an orphanage and his sister wo
like to have it for a home for aged couples, and he said th
had to now get together and see what would be the dispo
tion of it after he was gone (6441).

The witness further testified that Green said he wo
not let anybody go in the old Howland house because
floors might give way and some one be injured and he k
it locked for that reason; that membership in the Massach
setts Society of the Sons of the American Revolution is
limited to Massachusetts residents—any one with any M
sachusetts ancestors is eligible for membership (6444-5).

On cross-examination by counsel for Mrs. Wilks, witne
testified that the information he put in the applicatio
Mass. Exs. Nos. 367 and 369, as to the residence of Colo
Green he obtained from the Colonel himself in 1924 (6448-9
that Green said he planned to come to Round Hills abo
the 1st of July because he wished to avoid the payme
of income taxes to Massachusetts (6449).

Charles Sumner Ashley, of New Bedford, testified th
he had been Mayor of New Bedford for 32 years and kne
Green and his mother (6455); that Mrs. Hetty Green broug
her son to the witness' office in 1890 to 1892; after he can
to Round Hills he saw him very often; he identified h
signature on Mass. Exs. Nos. 100 and 227, certificates
ownership in the West Shore Trust, dated 1920 and 192
covering property located at Padanaram purchased by Co
onel Green (6456-8); the meetings of the Trustees of thi
Trust were attended by Green; the first meeting was hel
on the Round Hills Estate (6459); that was the first an
only time witness was in the house but was frequentl
around the grounds; Green said he was getting his money'
worth watching the people enjoy the grounds (6460); h
received many Christmas presents from Green for ten o
twelve years preceding his death; had a Mayors' outing a

Round Hills September 3, 1921, Green presented them all with little medals of the "Morgan" and they displayed much interest in the whaling ship (6461-3); Green said no matter what happened to him Whaling Enshrined would go on just the same (6464); witness was the owner of the boat when it became enshrined and afterwards was Treasurer and Green President of the Corporation (6465); in the Spring of 1929, he visited Green at Miami Beach and went sailing with him (6466).

On cross-examination by counsel for Texas, he testified that so far as he knows Green made no provision for continuing Whaling Enshrined (6467); that Green's physical condition went from bad to worse in the last six years; he lost a lot of flesh but his brain seemed to be as clear at the last as it was at first (6469). Witness identified Tex. Ex. No. 333, application for incorporation of Whaling Enshrined, September 28, 1936, and the same was given in evidence (6470); among other signatures was "Edward H. R. Green," residence, "Terrell, Texas" (6474) and the names of the officers were President Edward H. R. Green, residence "Terrell, Texas," Post Office address, "Round Hills, So. Dartmouth, Mass."; it was acknowledged before a Notary August 7, 1925 (6477-8).

On cross-examination by counsel for Florida, witness identified Fla. Ex. No. 26, a photograph of Green's house at Miami Beach, Florida, in the shape of a Christmas card which he received from Green (6485); that this was a distinctly private residence so far as he knew and there was no suggestion of any museum down there (6489); witness believes he built Round Hills for a home; Green was not registered as a voter there (6489-90).

On cross-examination by counsel for New York, he testified that Green never attended social functions; he was invited to everything and witness gave him a public letter requesting all officials in the service of the City to promote his convenience and interests to the fullest extent because of his generous hospitality to the people; he spent lots of money and gave work to a lot of people (6492-3).

Howard E. Odiorne, of Fairhaven, Massachusetts, testified he was a photographer and met Green in 1924; he stopped at his store almost every day for months; he was

building a photographic studio and wanted him to go down and assemble the equipment (6496); witness started there about October 6, 1924, and stayed until December 20th, a few days before Green went to New York; was there the next Summer from shortly after the 1st of July until about December 20, 1925, and during the season of 1926, but was too busy to go there in 1927 but spent every Wednesday afternoon and nearly every Sunday at Round Hills until September or October; in 1928, he was there off and on; Green had a well equipped studio, the best equipment he could get, a very good equipment for artificial lighting of portraits, etc., a system of tanks where he could develop roll film and all the other types of film that were used, a grand layout of cameras and lenses and witness thoroughly enjoyed working with the equipment because he could not afford it himself (6498-9); Green expressed his pleasure with it and experimented himself with different kinds of lenses; he was great in experimenting; he was interested in photographic processes and laboratory work; he was not physically able to be in the studio very much; they had a ramp built so he could run his little car right in but seldom got out of it; he had a revolving house mounted on a turntable similar to those in a locomotive roundhouse, you turned a wheel and the whole house turned around and up in the roof was a compass showing the direction of the house and he had a large camera there that was too heavy to move around so that the whole house was moved to get the camera in front of the object to be photographed (6500-1); he had a long range telescopic lens that had been built for the German Government during the war, capable of making a large view at a distance of several miles; witness took a large number of pictures of the "Morgan" while she was at Fairhaven and after the "Morgan" was put in place, took a photograph of her from practically every angle; Green distributed these to people in both large and small pictures and also large photographs of himself (6501-2); Green was well posted in photography and had many technical books about it; that he heard Green at one time make the remark that if he stayed in Massachusetts longer he would be taxed more (6502).

On cross-examination by counsel for Texas, he testified that he never heard Green make a direct statement about his residence; that Green put about $20,000 in this photo-

graphic equipment and had everything money could buy; that he became interested in moving pictures and at the studio at the present time there are 50 or 100 cans of film (6503-4); about 1927, he was quite sick and after that he picked up but would have bad days when he would have to stay in the house; from that period on he was suffering from arthritis, bad teeth and water on the knee, etc., and was addicted to the use of bromo-seltzer, when they tried to keep it from him he would go down and get some and witness would bring him water and he took it very nearly every hour (6503-5); from the time he first knew him his health began to grow worse, especially in the last four or five years, and in the last couple of years he did not get out of the car very much; during the first two years witness was in the studio he only came to the studio about three times but he would drive up to the entrance and witness would go out to him (6506).

On cross-examination by counsel for Florida, witness testified that he began working for him in 1924 and generally closed the studio about two days before the Colonel left; the studio is still there but was not operated up to the time of his death; about 1928, was the last time it was operated; Green brought a man from Miami to work in the studio that year and he did nothing but moving picture work (6507).

On cross-examination by counsel for New York, witness testified that in the Winter the studio was closed, the cameras covered up and all chemicals that would freeze thrown away; the lenses were taken to the big house and stored (6509).

Zabina B. Davis, of South Dartmouth, testified he was formerly a contractor and in 1917 was in the building business in New Bedford and during all of the years had kept a personal diary which he produced for the benefit of counsel (6511-12); that the diary shows that on August 29, 1917, Green arrived off Round Hills with his steam yacht, sent for witness and he went aboard ship and Green told him what he planned to do and wanted estimates for different things; on August 30, 1917, witness wrote him a letter which was given in evidence as Mass. Ex. No. 419 (6509-14); that they received Mass. Ex. No. 420, dated September 4, 1917, from Green regarding the transfer of the Gideon Howland Farm,

the Round Hills Farm and any other property located or adjoining Round Hills in the name of Hetty H. R. Green, and gave estimates on clearing the rocks, etc., building a breakwater, bath houses, piping from the spring, etc. (6520-22); and sent Green in reply, Mass. Ex. 421, September 7, 1917 (6524); that they received from Green letter of September 10, 1917, Mass. Ex. No. 422 (6527), stating he was leaving on the following Sunday to discuss the estimates; that his diary indicates that on September 16th he met Green and took him and his gardener and secretary to the farm; Mr. Marshall, the secretary, had been there before; they went over the place and talked over the estimates with Green; on that occasion he was looking for a spring of water; Green spoke of that as being a source of supply for the tank or water tower and said he recalled it as a boy (6529); that he received a letter, September 27, 1917, Mass. Ex. No. 423, from Green describing what work was to be done (6532); that he estimated $90,000 for this work and on October 5, 1917, the diary shows he met Green and his secretary at the station, took him to Round Hills and located the buildings (6534-5); on October 24, 1917, a representative of the firm which had the contract for building the greenhouse arrived and during the intervening period they were engaged in doing this work and completed the wharf and water tower; on March 19, 1918, Colonel and Mrs. Green arrived and he went to Round Hills with them spending nearly the whole day and also met them there on the 20th; on June 21, 1918, was with Green nearly two hours in the afternoon and on June 25, 1918, met Green at Round Hills and launched the flood lights (6537-40); that his diary shows he saw Green about the work on July 8, 13, 23, August 3, September 2, 14 and October 7; on the last date, Green bought the South Wharf and they discussed its repair (6541-43); that witness was one of the owners and joined in the deed to Green; the diary indicates he saw Green several times in October, November and December (6544-47); that Green gave a great deal of attention to all of these improvements, was there and saw almost everything that went on and was very much interested in the work; his principal idea was to see that they had plenty of men to carry the work along; they worked steadily for about two and one-half years (6547); on May 31, 1919, saw Green at South Wharf; again on June 13 and 14, 1919; he gave him a plan of the boarding house containing 75 rooms to estimate on; that they had

not then started the Round Hills mansion (6548-9); they broke ground about this time; he saw Green on July 9 and on July 19 went to Round Hills to meet Mr. Bossom, the architect, and Green; he liked the little hotel "as they called the boarding house" (6550); on August 8, 1919, his diary shows that he went to Round Hills in the "Lydia" with Green and his family, showed him the plans and estimate for the machine shop, three steel garages, etc., for $73,000; that was not built until after witness retired (6551); on September 8, 1919, his diary shows witness was on the "Lydia" and talked with Mrs. Green about building a cottage on a separate hill from the main house but it was never built; his diary shows that on August 19 the "United States" sank in Padanaram Harbor (6551).

Witness identified Mass. Ex. No. 75, a chemical analysis of spring water (6552); and Mass. Ex. No. 424, February 25, 1918, his estimate for building garages to cost $19,000 (6555), and Mass. Ex. No. 425, Green's letter to witness March 7, 1918, authorizing the garages (6557); he further testified that on one occasion when they had 50 men working, clearing up the ground, etc., Green said he wanted 150 men on the work (6558).

On cross-examination, counsel for Texas gave in evidence Tex. Ex. No. 334, license issued to Green, of Terrell, Texas, July 17, 1918, to build and maintain a stone breakwater in Buzzards Bay at Round Hills, Dartmouth (6565); witness testified that during the years 1917 to 1919, while working for Green, he spoke about sending plans to Texas (6569); that the letters to witness came from his New York office; that when he first talked to Green about building at Round Hills, at the time of locating the boat man's cottage, witness remarked that some day he would want the house there and the boat man's cottage would be in his way, and he said, "Oh, no, I never will erect a house there; that is my house—and he pointed to the ship off in the water" (6570); later, when he handed him plans for an estimate, he said, "This will be all one wing of a child's institute," referring to the house (6571); that witness never heard of his voting or making calls at New Bedford and he never talked to him about avoiding any tax (6572); these conversations with Green extended up to about 1926; after that he has no recollection of meeting him; he always spoke of his mother with great reverence (6572).

On cross-examination by counsel for Florida, he testified that when he first came in contact with Green in 1917 it was on the yacht "United States" and he undertook to construct a wharf for her about 850 feet long but the Government would not allow it to project out because of the current (6574-5); this wharf remained there for sixteen or eighteen years after the "United States" sank and Green lost all interest in it (6576); that Mrs. Green engineered the cottage and got it as far as the plans and estimate and then gave it up (6581); that his business arrangement with Green terminated early in 1920.

On cross-examination by counsel for New York, witness said he refused to estimate on the building of the house because of the war conditions, etc.; that the water tower was built to furnish water for the ship (6584); that Green never mentioned at any time that he intended to make this place over into an institution or to turn it into an institution (6585); that at the time he started the Green house, he told witness "my sister and myself own this together and I have made arrangements to do what I want to do here" (6586).

On cross-examination by counsel for Florida, the witness identified Fla. Ex. No. 27, indicating certain work to be wrecked at the Round Hills Pier, dated July 31, 1932 (6594).

Thereupon counsel for Massachusetts gave in evidence Exs. Nos. 426, 427, 428 and 429, correspondence with P. J. A. Van der Putten relating to the furnishing of the Round Hills house, etc. (6602-6611).

Yvonne A. Jette, of New Bedford, testified she was employed by Green November 29, 1933, to August 7, 1936, in charge of his numismatic collection; remained at Round Hills about ten days that year, then went to Star Island and stayed there until June, 1934; came to Round Hills and remained until December, 1934; went to Star Island, staying until May, 1935, returning to Round Hills, where she stayed until November, and went back to Star Island, remaining there until April, 1936, returning to Round Hills when the Greens went to Lake Placid (6613-16); Green worked on his numismatic collection up to the time he became incapacitated; the last year he took up the modern collection of stamps—about the year before he died; during the intervening years, up to the time he started to work

on his modern collection of stamps, witness did not see any stamp collections around (6617); he worked on the stamps himself with his night nurse, Miss Salmon, and did not employ any special girl for this work (6618); witness' work was typing and putting the coins away and getting out any special kind that he wanted, packing the coins when they went from one place to another; it was his practice to take them but he did not take his stamp collection; Green devoted considerable time to his coins, especially during the evening; if he received new ones, he would look them up in his own catalogues and buy them if he did not have that particular coin and sometimes he would return them (6618); witness worked until eleven o'clock every evening and Green worked from time to time during the evening (6619).

On cross-examination by counsel for Texas, she testified he took his coins wherever they went and traveled with 30 trunks; at different times he spoke of having resided in the State of Texas and having helped to start a bank, about his friends and the things he enjoyed doing down there; he called it his legal residence; he seemed to have pride in his Texas citizenship; he went to Texas in 1935 and looked forward with anticipation to that trip because he had not been there for some time (6620); he went there because he wanted to go (6621).

In response to questions by counsel for Mrs. Wilks, she testified that on that trip to Texas only one trunk of coins went with him, the remainder came back from Florida to Round Hills, and in the Spring of 1936, he took one trunk of coins to Lake Placid, the other 28 or 29 were shipped directly from Miami to Round Hills (6624).

J. Edward Harris, of South Dartmouth, testified that he had lived there since 1919 and was General Superintendent of the Howes Construction Company which built Round Hills; he went on the job upon his arrival from New York June 28, 1919, and remained there until September 28, 1920; the President of his Company, Mr. Janoff, and witness outlined the house on the ground from the architect's plans and Green changed it about twenty feet and as finally located, Mrs. Green, at the Colonel's suggestion, turned the first spade of dirt; the excavation took about three weeks;

Green came there about once a day and as the building progressed, he spent some time there in the afternoon; the yacht "United States" sank in the month of August, 1919, and the Greens lived on their house boat "Day Dream"; Green was then able to get about without any assistance other than a cane; the original plan called for a wine cellar under the servants' wing in the rear of the house, which was planned to be built of six-inch hollow tile and the door furnished by Green was put on; when Green saw this vault after it was finished according to the plans, he took a hammer and broke a hole through it and said he would reconstruct it himself; in 1921, after he had been in the house the first Summer he had a portion of the cellar under the south of the house re-inforced with concrete and moved this vault down there from the rear of the building and stored his liquor in it; he said that he had bought the door in St. Louis at a cost of $11,000; it came out of a bank; this vault, as reconstructed, was built of one-inch rods (6625-30); throughout the entire house the electrical outlets in each direction on the ceilings and around the picture molding, etc., was spaced six feet on centers, as shown on the architect's plans; Green never said anything to witness about the reason for this or what he intended to do with the house ultimately (6631); Green moved into the house July, 1921; witness left the big house in September, 1920, but continued to live around there and do work for Green; Green built a dance floor on the end of the wharf, a combination laundry and garage and other small buildings (6632); he also laid a maple floor throughout the second floor of the building instead of the composition floors called for by the plans; between 1924 and 1927 or 1928, there were several years when witness did not work except to check up certain plans for buildings that Green contemplated elsewhere; in 1928, he built an addition to the power house and shop and put in the water system; converted what was the boarding house into a four or five family dwelling and did considerable work for the Institute of Technology; this was principally in 1929 and 1930 (6633-4); witness checked up plans for the Star Island house and plans for a house in Marlin, Texas, for his ward, Miss Dorothy Marshall, when she was married; also plans for a house which he gave Miss Ruth Lawrence for her parents; when the house was closed in December, seven

employees were usually left there—a carpenter, painter, cook, night watchman, etc. (6634-5).

Witness identified Mass. Ex. No. 109, an estimate made in April, 1921, of the cost of repairing the old Howland house for $2100; Green said he was planning an anniversary of the building of that house about two years hence and he wanted to fix it up and furnish it as it was in the old days but never got around to it (6637).

Witness further testified that the construction of the Round Hills house is monolithic—the chimneys are made of brick and run from the basement through the house and spaced so they come in the center of the rooms between the outside and corridor walls; the partitions are built of terra cotta blocks forming a double wall back of which are the plumbing pipes, etc.; throughout the second floor, it was permanent construction and there was nothing to suggest that the partitions were removable (6637); there was no concealed plumbing in the bathrooms except what connected directly with fixtures installed at the time the house was constructed and nothing to indicate that the bathrooms would be converted into sculleries, etc. (6639).

On cross-examination by counsel for Texas, witness testified that the terra cotta blocks of which the partitions were constructed bore no load; partitions could not be taken out and rooms changed easily because between each room was a bathroom which would have to be removed to make it into a large room; that probably three-fourths of the outlets were blind (6641); during the time he knew Green, he was not active in the social life of New Bedford; witness would not say that the house could be readily converted into an institution but could be changed as any other residence might be turned into an institution (6643).

On cross-examination by counsel for Florida, he testified he met the architect, Mr. Bossom, a dozen times during the construction of the house; this house was typical of modern home construction and was not different than any modern home of that size; that the house was built as a residence and they did not have to have a building permit from the Town of Dartmouth or comply with the State requirements for fire-proofing for public institutions, etc.; it would not satisfy the requirements of the Massachusetts law for public buildings (6644-6).

On cross-examination by counsel for New York, he testified that there is an old Howland house on the top of the hill known as the "Homestead" other than the one he mentioned, which is not used; that the old house he estimated on is enclosed with a stone wall near the burial plot on the north side of the property (6647); that he could not have told Mr. Cole, counsel for New York, in an interview that the architect had said the house was designed so it might become a hospital because the architect did not tell him any such thing (6648).

HARRY A. NEYLAND, of South Dartmouth, testified that he was an artist by profession and first became acquainted with Green in 1922 when he was painting on the Yacht Club Wharf at Padanaram; that Green then walked with a limp but got around comparatively well and drove his own automobile; in 1924, witness had an interest in the whale ship "Charles W. Morgan" and agreed to present it to the City of New Bedford if they would guarantee its maintenance; he discussed the matter with Green and told him that as the ship had been owned at one time by Isaac Howland, Jr. and Edward Mott Robinson, he thought he might be interested in its preservation; Green became interested and wanted to buy the ship and said, "I am doing everything I can to make Round Hills attractive as a memorial and I want that ship, it having been owned by my ancestors—I want that ship to go to Round Hills and stay there" (6642-6655); witness declined because it had been offered to the City of New Bedford but said that he would tell them the offer would be withdrawn October 15th unless accepted; Green said he would endow the ship with ample money if he could get it to Round Hills and witness told him Round Hills was not exactly the place for the ship, that anyone coming to New Bedford should be able to study not only the whale ship but the oil refinery, cooper shop and other industries pertaining to whaling and if he had those things at Round Hills, it would be the place for it; after further discussion, he told Green that if the City did not take it and he was willing to build a whaling village and endow the ship he could have the ship and suggested the organization of a corporation (6656-7-8); later, Green invited him to dinner and he found under his

plate a letterhead "Round Hill Repository of Maritime Antiquities and the Charles W. Morgan Enshrined;" witness suggested it be changed to "Whaling Enshrined;" witness identified certificate of incorporation of Whaling Enshrined August 26, 1925 (6658-9); that at the time the ship was offered to Green, it was at the wharf at Fairhaven opposite New Bedford and remained there during that Winter while it was being reconditioned and refitted from a bark into a ship; Green showed great interest in it and was there frequently; she was towed from Fairhaven to Round Hills and arrived there May 6, 1925; Green conveyed a portion of the land to the new Corporation (6662); witness made a brass tablet to commemorate the history of the ship for which Green paid; it is on the rock at Round Hills; he also designed four other tablets—for the "Wanderer", another whaling ship wrecked at Cuttyhunk, the foremast of which is erected in concrete back of the swimming pool at Round Hills, a tablet to the windmill, another for his mother and another relating to the landing of Bartholomew Gosnold; these tablets were started but never finished (6664); Green postponed the work in 1935, when times were hard and he said he was not going to spend any more out of principal and to postpone the casting of these tablets for awhile (6665); about that time his health had become very much worse and from then on there was a lessening of interest in affairs generally (6665); witness was present at Round Hills when his sister, Mrs. Wilks, discussed the joint ownership of the property (6666).

In 1924 or 1925, he spoke of the misunderstanding of his mother; that many of the inhabitants had unkind feelings towards her because of certain business dealings, which he felt were unjustified, and he intended to do all he could to overcome that ill feeling in this section of the country; on many occasions he expressed deep affection for his mother; in 1924 or 1925, he had a concrete foundation started in front of the swimming pool near the "Morgan" for a museum to house whaling gear, prints, pictures, books and other things of a maritime nature; later, about 1925, this was filled up (6671-2); about July 1st of the year of the Lindbergh Flight in 1927, Green said he was troubled by the mosquitoes and was going to fill in the marsh and build a croquet field so big he could land airplanes on it; he said, "I am a man of one track mind, I have been giving

all my time to Whaling Enshrined; the ship is well tak
care of and I would like to give my entire time now
the building of an airport, which will take considera
money, and let the matter of the Whaling Enshrined sta
over until we finish the airport, after which we can contin
that work" (6674); that they had a conversation about t
time he gave up the broadcasting station; he said he bu
it for the purpose of entertaining the public and as long
radio was in its infancy he was greatly interested in
but as soon as people began to get radios more extensive
in their houses he felt they were losing interest in th
radio station, and when they began to get them in thei
automobiles, that was the end and he immediately disco
tinued that service and turned it over to the Massachusett
Institute of Technology for experimental work (6675)
about 1927, his secretary, Marshall, brought him some lega
papers to sign and he said, "I see you have me still residin
in Texas" and on the side said to witness, "You know
have not lived in Texas for a good many years, not sinc
1911" (6675-6); that Green told him in 1924, when he firs
became interested in the ship, that he and his sister had
decided there was no reason why the Hetty Green Trust
should be dissolved; that she was anxious to have him
administer the estate and they were going to keep things
intact; he said he had increased the original investments of
his mother and she agreed with everything he was doing;
that he saw no reason to break up the unity of the estate
(6677). Witness received Mass. Ex. No. 222, telegram from
Green, June 8, 1927, about the anniversary of the Town of
Dartmouth and said that the flag prize referred to had
reference to a flag for the Town of Dartmouth designed by
the witness and Green offered $100 in gold to the Dartmouth
lady who would make a flag after the design and this was
the day when the prize was awarded. Mass. Ex. No. 209
was the invitation and program for the dedication of
Whaling Enshrined (6677-9); and Mass. Ex. No. 431 was a
booklet relating to the "Charles W. Morgan", which Green
had approved (6680); he further testified that Green con-
tinued to be a special life member of Whaling Enshrined
until his death; that in 1924, he was sitting in the little car
with Green watching the workmen engaged in the building
of the wharf, etc., for the ship and Green said, "I am so
interested in this place that I just hope when my time comes
I will be at Round Hills when I die" (6683-4).

On cross-examination by counsel for Texas, he testified that the conversation with Green and Marshall, in which Green said, "I see you still have me residing in Texas" was in 1927 (6685); that witness knew from what Green said he had paid his poll tax in Texas and that he had paid his income tax and Federal tax as a resident of Terrell, Texas, and when Whaling Enshrined was incorporated that he gave Terrell, Texas, as his residence, and also that he had had a conversation with the Tax Commissioner of Massachusetts relative to his becoming a resident of Massachusetts, which Green declined to do (6689).

On cross-examination by counsel for Florida, he testified that he was never on Green's pay roll and he never paid him anything for the work he did in connection with Whaling Enshrined (6693); that from his work and talks with Green, he gathered that the motivating idea in building Whaling Enshrined and gathering the various relics was to relieve the tension and ill thought that existed among the people about his mother by doing something of that character in the community, also to build what he wanted to consider as a Hetty Green Memorial to his mother (6695); that witness believes he implanted the idea of Whaling Enshrined in Green's mind and that Green had the idea his place would be the repository of maritime antiquities and the "Charles W. Morgan Enshrined" (6708); in 1924, when Green started to lay the foundation for the museum, witness helped him to obtain articles of considerable value, nautical curios, and turned over his collection of whaling gear; that the things he bought were brought originally to the house and stored in the cellar, garage and attic; whatever Green bought he paid a good price for and he bought quite a number of things and if all were gathered together, he would have enough for a large whaling museum; it is all at Round Hills (6716); that the foundations for the museum were covered over and a parking space made there; on one occasion when he had lunch with Green, witness inquired for Mrs. Green, and he said she had gone off in a huff but that she had made a very good suggestion before she left and that is, "I give up building a museum and use this house for a museum" (6718), referring to the big house in which they were at the time; that Mrs. Green also said she would like to build a small house up near Smith Neck Road and use the mansion for a museum (6719).

Fla. Exs. Nos. 28 and 29, photographs of the founda for a museum, were given in evidence (6720).

Witness further testified that in the Fall of 1924, asked Green why he didn't stay for Christmas with all work going on and he replied, "I cannot; I must leave be Christmas; you know I can't stay in Massachusetts months; I am afraid they will claim me as a resident tax me accordingly, and that I want to avoid; also I h bought property in Florida and I am anxious to get d there and start developing" (6722); he showed him pl of the buildings he contemplated erecting as a home Florida; he was very much interested and frequently as if witness could offer any suggestions and that he wo like to have him visit him there and look over the situati in 1927, or the year of the hurricane, he was quite exerci over the loss of some of his Royal palms and was anxi to return there to take care of the damage (6723); af 1924, his interest in Florida continued and after finish the airport he said, "As soon as times improve and I f a little better, I am anxious to finish our plans for Whal Enshrined, for I do not know that I can come up here a spend as much time at Round Hills as I should like; e time I come the doctors advise me against it, and I m have to spend most of my days in Florida, but each ti I go there I like it better" (6724); on several occasio when he was unable to leave Round Hills for a week or t days, he said he wished he was in Florida where he cou get outdoors (6724-5); he said he expected to make t "Charles W. Morgan" permanent as soon as the depressi was over and before he was given the ship he had promis to endow it as a memorial to the whaling industry; that t library at Round Hills contains much literature relating whaling and he gathered up books all over the country a sent them to this house (6725-7); that there is near Rou Hills house a concrete section of the whale ship "Wa derer" and the foremast which was salvaged from t wreck on the Island of Cuttyhunk in 1924; also flagpol from which were flown the house flags in the old days whaling from the ship's masthead (6728); there are al miles of anchor chains around the grounds and driveway (6728-9).

Witness admitted receiving a Christmas card, Fla. Ex Nos. 26 and 26-A (6730), and further testified that he i troduced Miss Angelina Jones, the founder of Sol-e-Ma

a hospital for children, to Green and he congratulated her on doing something in which he was much interested and which he had intended to do himself (6731). On cross-examination by counsel for New York, he testified that after 1932, he had charge of the "Morgan" and during the years 1932, 1933 and 1934, received no compensation whatever; the last two years he placed his name on the pay roll for a sailor's wages (6733); that most of the Summer residents left after Labor Day but some stayed later; that their Fall weather was frequently beautiful; that Green occasionally was unable to leave the house because of fog and dampness (6734); that some of the anchor chains at Round Hills came from the Charleston Navy Yard and were used for huge anchors in the Navy and had no particular bearing on whaling; there are also there some old whale boats (6736); Green told him he was trying to avoid paying taxes in Massachusetts; that the public was permitted to use the air field at Round Hills without charge (6737); that Green always like the Round Hills house for a home but mentioned its adaptability for a museum—that Mrs. Green had made a good suggestion; he never said to witness the house was too big for him (6739); did not tell witness that Mrs. Wilks had in mind turning the house into a home for old couples (6740); he said he consulted her pertaining to the estate and she was agreeable to everything he wanted to do or was doing (6741); Green told him he remained out of New York from 1933 on because of suits pending against Directors of the Chase Bank (6742-3). On cross-examination by counsel for Mrs. Wilks, he testified he saw Green the last time at Round Hills shortly after his return in 1935; that for a few years before his death he did not support the Massachusetts Institute of Technology operations (6745); that he cannot say that Green had lost interest in Round Hills by 1935 but his health had a great influence on his activities, but he wanted to continue building Whaling Enshrined (6746); in the years 1931 to 1934, he stayed at Round Hills until December and the doctors advised him not to spend so much time there and to seek a drier climate but he remained in spite of their advice (6747); that the public was never admitted to the Round Hills house; it was furnished and maintained as his private home (6748); that he not only said Whaling Enshrined was to be memorial of whaling days but also to

himself, his mother and sister and all of his ancestors because the beginning of the great Green fortune was in whaling (6749).

Upon being recalled for further cross-examination by counsel for Florida, witness produced one of the letterheads regarding Whaling Enshrined, which was given in evidence as Fla. Ex. No. 40; these letterheads were printed and used by Green on a few letters (6756-8).

Ruth L. Briggs, of Fairhaven, Massachusetts, testified that her maiden name was Ruth L. Lawrence and she first met Green in the Summer of 1917 while visiting Mrs. Wilks at her estate in Greenwich, Connecticut, when she was fifteen years of age, and came to Round Hills with them that Summer, spending the Summer of 1918 on the yacht "United States" anchored off Round Hills; that she went on little fishing trips and short trips to Newport and the waters of Long Island Sound (6760-4); that by agreement with her parents, she became a protegee of Green by which she was to receive a certain monthly income and spend one-third of her vacations with the Greens; that she is still receiving an income from a trust fund (6764-5); that Green sent her to St. Mary's School, Peekskill, New York, afterwards to the Wilkes-Barre Institute; she wanted to go to Smith College but he wanted her to go to Wellesley, which she did; while there she spent every Summer at Round Hills, except 1925, when she went to Europe and the Summer before she was married in 1926 (6764); Green also educated several other girls and seemed to want everyone to go to Wellesley; the Corley sisters did go there (6766); after her marriage, when she became a resident of Massachusetts, she was complaining to him about the taxes she had to pay that State and he said, "Why don't you go to Texas to live and you won't have to pay any tax" (6767); Green selected the clothes she wore at Round Hills but she was allowed to choose the clothes she wore elsewhere and made use of the order blanks—Mass. Ex. No. 376 (6768); that her husband is in the bond business in New Bedford and Boston and Green made purchases through him; witness was one of the incorporators of the Round Hills Radio Corporation; that 1924 was the last Summer she spent at Round Hills, and identified Mass. Ex. No. 432 as

a photograph of the little car in which Green rode in all kinds of weather (6769-70). On cross-examination by counsel for Texas, witness said that Wellesley College is a school attended by girls from all over the United States, a great many from Texas; that Green frequently talked to her about Texas and said he liked it because the Government down there was not as hard on him as it was up here and the politicians came cheaper (6771); while at Round Hills, she met a number of his friends from Texas (6772); his health began to decline about 1933, prior to that he enjoyed good health, although there were times when he was very ill and had blood transfusions (6774); during the last eight or ten years of his life he was a habitual user of bromo-seltzer and tried to hide it from his family and would go to New Bedford to get it and this undermined his health (6775).

Harry R. Bennett, of South Dartmouth, testified that he was Clerk and Treasurer of the Town of South Dartmouth and in July, 1917, was employed by Green as second steward on the yacht "United States" (6780); Green and Mrs. Green came aboard at the Columbia Yacht Club in July, shortly after their marriage and they sailed for Round Hills, stopping there about three weeks; Mrs. Stafford, Mrs. Briggs and Dana North were in the party; about October 31st, they started down the coast and struck a storm and went into Tampa, then on to Galveston, remaining there eight or nine days, and then to Aransas Pass, Texas, on a fishing trip; Green went ashore for four or five days at Galveston; they returned to New York and remained until they sailed for Round Hills in 1918 where they arrived about July staying there all season; that Winter the boat remained at the wharf at Padanaram and sunk there in August, 1919 (6781-4); with the exception of a trip to Block Island and a trip to New London for repairs, the yacht remained there until she sank; Green and Mrs. Green lived on the boat from July until the middle of October, 1918; he would leave on Tuesday night for New York and return Friday; after breakfast he would go to New Bedford in one of the speed boats, stay practically all day and come back late in the afternoon (6785); the foundation for the big house at Round Hills had started before the boat sank; the Greens stopped at the Tabitha

Inn at Fairhaven and in the boat "Lydia" until they got on the "Day Dream"; they had a crew of 72 on the "United States" and it was fully manned during the Winter of 1918 (6787); in 1918, Green purchased several other boats and they laid in a circle around the "United States"; he called it his Navy or Mosquito Fleet; each boat had a Captain and a flag and when the Colonel wanted any man to come along side to take him ashore or for duty, the flag on the "United States" would be raised; the Captains of the various boats would come aboard the "United States" at eight o'clock, have breakfast and then go to their various boats and wait for the flag (6789); he left Green's employment in 1924, when elected to his present position; in 1927, the Colonel wanted water from the Town of Dartmouth connected with his various houses at Round Hills and estimated it would cost $102,000 to install the water in his house; he made a written offer to give us the sum of $35,000 and take the rest in bonds, interest free; witness and the Chairman of the Board of Selectmen and others went to see him and he renewed his offer, but due to legal entanglements and not enough takers to warrant the expense, it fell through (6790); in 1917, Green's health was very good and he walked without a cane and up to 1924 his health was good.

On cross-examination by counsel for Texas, he testified that the "United States" was taxed in Massachusetts but the tax had to be abated because it was not in Massachusetts waters April 1st; that the assessment against the Round Hills property is about $600,000; that after 1921 there was a normal decline in Green's health; Green never offered himself as a voter in New Bedford or in Dartmouth (6792-7); that he weighed about 300 pounds when witness first knew him and when he died he weighed about 150 (6798). On cross-examination by counsel for Florida, he testified that after 1921 and 1922, Green started to sell this Mosquito Fleet as fast as he could and finally sold all of them with the exception of the "Lydia" (6806-7); he identified Fla. Ex. No. 30 as an assessment of the property of Green in South Dartmouth January 1, 1936, and same was given in evidence (6810); also identified a photograph of the "Lydia" and same was offered as Tex. Ex. No. 335 (6820); the United States Internal Revenue receipt for excise tax on pleasure boats paid by Green, "of Terrell,

Texas," for the year ended June 30, 1924, was given in evidence as Tex. Ex. No. 336 (6821).

EDWARD L. BOWLES, of Wellesley Farms, Massachusetts, testified that he was a professor of electrical communications at the Massachusetts Institute of Technology and a consulting engineer and had been engaged in the Round Hills Unit of the Institute since its inception about 1925; that he came in contact with Green through a visit made to him by Dr. Stratton; Green told him he had admired Dr. Stratton for the help he had given a group in which he was interested while he was Director of the Bureau of Standards at Washington (6825-6); witness was in charge of the administrative detail and the contact man with Green and tried to discover his interest in research work; Green said he wanted to develop some serious research work there and that the Institute could make use of his facilities, particularly the buildings equipped for experimental radio (6827); he told him of his pioneer work with the station WMAF and his development of facilities for wired radio (6828); he expressed a desire to have them make use of his facilities and develop their own problems; he later made the first grant of money and emphasized that they must recognize that putting these building facilities at their disposal represented a contribution; he later increased his contribution; up to July 1, 1926, their records show they were given $35,000 for their program beginning November 1, 1925; in 1926-27, there was $5,000 in money and $2,000 in facilities; in 1927-8, $10,000; in 1928-9, $20,000; in 1929-30, $40,000; in 1930-31, $20,000; in 1931-32 about $20,000; in 1932-33, $20,000 and in 1933-34, $10,000—all monetary contributions and in addition they were given the use of the buildings (6830); they had the use of radio building No. 1, the original broadcasting station with numerous electrical facilities; No. 3, a building in which there was some equipment for the study of radio with reference to navigation and building No. 6, which was placed at their disposal without equipment; in 1928, he gave them a large dwelling house as quarters for their men, building a two-car garage and gave them the use of a pavilion; later he permitted them to use a building which was made into a dwelling; the Institute supplied additional

funds to put them into use (6832-3); they induced the Goodyear Company to put a dirigible at their disposal and Green gave the money for building a hangar for it in 1929 and the Goodyear Company gave $2,300 to complete some details in the structure (6833-4); in 1931-2, they were given the use of the broadcasting station near the Colonel's house and later he turned it over completely for use in connection with the fog dissipation program and it has been used by them up to within the past two or three months; they also had the use of the machine shop and machinery at Padanaram Wharf (6834-5); Green never withdrew the use of these facilities although in 1933-4 he discontinued his monetary contributions; during the entire period up to Green's death, they were furnished power and water without charge and telephone lines and the cable facilities on the estate (6835); they first began to experiment to improve radio transmission and erected two radio stations—one an amateur and the other an experimental station, and in connection with the latter, had another experimental station at Cambridge and made an extensive study of what is called fading, one of the vagaries of transmission; Green and the Institute became very much interested in aviation and they made a study of radio service to aid navigation of aircraft in fog and put it before him (6836-7); while their radio experimenting was going on, their station was very serviceable in connection with the Vermont flood in 1927 and Round Hills was one of the principal contact stations; the people in Boston could not get in communication with Vermont and this enabled them to keep in contact with the families and helped a great deal during the disaster which pleased Green, because he saw it was becoming quite a public service; also during the sinking of the "Vestris" the station was very active in the rescue work and was one of the first to pick up radio news of the "Hindenberg" on her trip here when communication was lost for several hours; they also kept in communication with Byrd's Arctic or Antarctic Expedition and handled a tremendous amount of the traffic between the men down there and their families (6837-8); Green was kept fully informed by reports and by the witness of these activities and if they did not keep him in touch, he began asking questions; he followed their experiments and witness was amazed to find the way in which he was able to understand what they were trying to do in some of these detailed researches (6839); in con-

nection with their work on radio aid to aerial navigation, they put before Green a program for the study of navigation of aircraft in fog, made an extensive study of short radio waves with reference to radio signals and witness believes found the only answer to that problem (6840); they also made a study of the scattering of light and gave Green practical information on this subject for use in his own airport, developed a sound-measuring instrument so sensitive that if used with an amplifier it will respond to the temperature variation in the air; this experiment led to the study of fog dissipation which pleased the Colonel extremely and of all the work they did it probably impressed him most; by their present experimental equipment they can open up a tunnel along the surface of the Round Hills airport about 150 feet wide on an average, about 3,000 feet long and 70 feet high, so that airplanes if brought down into the tunnel by means of radio can land by contact flying, and they are now negotiating with commercial interests to continue that problem (6841-2); after Green felt he could not continue to give financial support for the fog dissipation problem, they interested the Bureau of Air Commerce and the Army and Navy sufficiently to work with them under a contract at Round Hills for three and one-half years, with Green's permission, and while so engaged, they kept him fully informed; the Institute became interested in high voltage development problems in what the newspapers called "atom-smashing" and they used the M. I. T. dock at Round Hills to house their experimental generator which has recently been brought to a point of completion at Cambridge (6842); that there was an obvious change in Green's health in the Fall of 1932, when he had a serious illness and blood transfusion (6843-4); in a conversation with Green, the latter said the doctors had finally succeeded in persuading him he had either to follow their instructions or expect to go any minute; that he must get away and take extreme care of himself and confine himself most of the time to his bed if he wanted to live on for awhile; that witness saw him at both Round Hills and Miami and from that time on he seemed to have generally lost interest in everything (6845); prior to that he took the keenest interest in their work; he could get into the airship hangar in his car, through a special door, and at their laboratory he would look through the door and they would bring things out to show him and make

sketches to illustrate what they were doing (6845); after the Fall of 1933, he would go off the estate for a short ride but witness does not recall ever seeing him stop, as in the past, where the activities were going on; prior to the 1932 illness, Green, in speaking about his health, said he was going to go to Round Hills and continue to go there and if he was going to die there, that was that, "because he wanted to be there" (6846-7); in working in collaboration with the Government, they were permitted to disclose to Green the nature of what they were doing (6847).

Mass. Ex. No. 355 is a copy of a joint invitation from the Massachusetts Institute of Technology and Green to the research laboratories at Round Hills, November 23, 1935, and was attended by Green; it was the day he left for Florida (6847-8); that they started out with one man in connection with the staff at Tech and then had as many as nine or ten at Round Hills and went as high as fifteen at one period; at the present time there are two men there; up to the time of Green's death they had seven men there (6848); Green remarked on one occasion that market conditions being as they were he seriously questioned whether he was justified in spending a certain sum of money on research work when that same amount of money given to a small bank might keep it from closing and previously, when he gave them $70,000 one year, he pointed out it was a particularly good year (6849).

On cross-examination by counsel for Texas, he testified that the experiments they conducted with Green were with a view to their general value to the public but he wanted Round Hills to stand out; he contributed about $150,000 (6850-1).

On cross-examination by counsel for Florida, witness said in conducting the experiments at Round Hills sometimes he would come down for a day and spend the night; sometimes stayed two or three days (6855); that Round Hills was one of the best places on the coast to study fog dissipation (6856).

Witness identified Fla. Exs. Nos. 31 to 36 (6862-6879), correspondence between the Institute of Technology or witness and Colonel Green in 1934, in which appeals were made to him for contributions to the experiments at Round Hills, and stated they got no more money but he continued to let them use the property (6879).

On cross-examination by counsel for New York, he testified that on one occasion Green said regarding the large house he had the rooms arranged so that the ceiling in one of the first floor rooms could be removed to make an assembly room or something of the sort (6882); he also said that his physicians had argued with him about Round Hills but that he was going to come back to Round Hills anyway because that was where he wanted to be (6883); that witness wrote an article for the Technology Review, October, 1934, entitled "Science at Round Hills", the opening sentence of which reads:

"Spectacular demonstration such as the dissipation of fog and the generation of the world's highest direct voltage have called attention from time to time to the unusual research station operated by Massachusetts Institute of Technology amid the surroundings of the magnificent summer estate on Buzzards Bay" (6885).

HERBERT D. HILL, of South Dartmouth, Massachusetts, testified that he was resident manager for the Round Hills Estate and had been in Green's employ since September 1929, first meeting him in 1926; was general superintendent of the airport from 1929 until Green's death; in addition, he had charge of the flying school for training, repairs, gasoline storage, etc.; that the equipment at the airport was the best that could be bought; they also had a crash wagon and equipment for hydro as well as airplanes (6885-7); there was a ramp 150 feet long running out into the Bay; the field had a Government rating of A-1; with a four-way field which was unusual at that time; the Bert Hill Flying School was for training students and was run as close to cost as possible to keep down competition with those who had to make money and in order to get as many boys as possible (6889); at one time, in 1929 or 1930, they had 42 students at the School and it gradually dwindled; no landing charge for planes was made and every facility was offered in the way of gasoline, oil and repairs, furnished at less than prevailing rates (6889-90); the number of planes using the field in the course of a year averaged from 200 to 275; the field was maintained until January 30, 1937, and had been continuously in operation up to that time (6891); if some unusual plane came in, Green would come down to

look it over, ascertain the owner and pilot and discuss the plane with them (6891-2); he purchased a plane in 1929 known as the "Miami Maid", a flying boat made in Florida, and presented it to Mrs. Green; it was kept at Round Hills; Mrs. Green and some of the wards and her friends used it; there was also two or three Goodyear blimps, with names like "Mayflower," "Virginia" and "Reliance" (6892); the first blimp was used in connection with the Massachusetts Institute of Technology for radio experiments; in 1930 or 1931, Green went up in a blimp and a moving picture was made and privately shown at the Capitol Theater in New Bedford (6893); Green would come down in the afternoon and discuss with witness the flood lights, revolving beacon, etc., at the airport (6894); Green had the "Lydia" converted by putting bunks on the deck to give outings to crippled children and it was used by the children from the Sol-e-Mar Hospital; the boat would pull up along side of the "Morgan" so the children could see it and the airplane field; if the weather was suitable they would cruise around and go outside the breakwater; at one time he had an airplane meet for crippled children at the blimp dock and gave prizes; he also provided a bus for the transportation of girls to the public schools at Dartmouth, and identified Mass. Ex. No. 433 as a photograph of the bus (6896); it was not confined to the employees at Round Hills but picked up the children at their homes and brought them back; this continued all the year round until the license expired in 1936 (6897-8); Green had a knowledge of aeronautics, read books on the subject and could discuss the matter intelligently with the mechanics, etc.; in 1932, witness had a conversation with him in which he said he was glad to get back to good old Round Hills and on a previous occasion he said he didn't stay longer because he was afraid of the Massachusetts tax, that he was limited to six months; he frequently spoke of it; the first conversation about it was shortly after witness' employment in 1929; witness asked him once why he didn't stay longer and forget about the tax and he said when it got around December it got a little cool for him and witness suggested that he come a month earlier and get acclimated so he could stay longer and he said, "Probably I will in the future, but at present things are not just right for me but I may in the future stay the year round;" he said he would like to spend his remaining days at Round Hills (6899-6900); when he left Round Hills

in the Fall, seven servants were usually left in the house—painter, carpenter, houseman, bus driver, cook and housekeeper; four ate and slept there; he also had on an average of from fourteen to sixteen employed in the power house department and 24 or 26 on the Farm; these latter were maintained the year round, with the witness and his assistant at the airport station, and the man in charge of the boat house; they lived in one of the houses on the estate; shortly before his death, Green installed an oil heating system in the house, a larger unit than the former one (6902); flowers were brought from the conservatory to the house every day; after 1932 or 1933, there was a perceptible change in the Colonel; prior to that he got around regardless of weather and even after his health failed in 1933, he would go to town on bad days in a big closed car (6903).

Witness identified Mass. Ex. No. 434, a photograph of outboard motor race and trophy, presented to the New Bedford Yacht Club by Green July 16, 1930, and same was given in evidence (6905). Upon examination by counsel for Texas, he identified Tex. Exs. Nos. 337, 338, 339, 340, 341 and 342 as photographs of various signs relative to parking at Round Hills, and the same were given in evidence (6908-11).

Witness further testified that Green told him his interest in aviation and balloon races dated back to his days in Texas (6913); he never rode in an airplane but at one time he took one ride in the blimp (6914-17); in addition to saying to witness that he could not stay in Massachusetts over six months on account of income taxes there he also said it was getting a little chilly; that going back and forth to Florida—going back and forth—the trip alone would tire him, his blood was getting thinner and he was getting older (6919); that witness is now employed by the Special Administrator of the Estate (6922).

Tex. Exs. Nos. 343-A-B-C-D-E-F-G-H-I-J-K-L, being applications from Edward H. R. Green, Round Hills, South Dartmouth, Massachusetts, and Terrell, Texas, for motor vehicle registrations in Massachusetts for the year 1936, were given in evidence (6929-6951).

On cross-examination by counsel for Mrs. Wilks, he said that the plane "Miami Maid" was sold by him for Mrs. Green during the past year.

Thereupon counsel for Massachusetts gave in evidence Mass. Ex. No. 435, letter from Green to C. J. Callopy, Presi-

dent of the Motor Sales Company, of New Bedford, June 1931, and Mass. Ex. No. 436, an order on the Commodore Biltmore Garage enclosed therewith, regarding the delivery of a Lincoln car purchased (6954-6).

FRANK C. TAYLOR, of New Bedford, testified that he was a contractor and did work for Green around Padanaram in 1917 (6959-61); he further testified that his first work was replacing the mooring for the yacht "United States" in 1919, building a retaining wall at Padanaram, repairing the wharf there, work connected with various whaling memorials, salvaging the mast of the "Wanderer," moving the blacksmith shop, the whale and oil works, etc.; that the work on the "Charles W. Morgan" was begun in 1924 and various jobs done on it up to 1934; the blacksmith shop from 1925 on; on the various whaling memorials the work started in 1924; the radio work in July, 1922, and continued to 1927; the broadcasting station, experimental station, tower, etc., from July, 1922, to January, 1923 (6964-6); the airplane and flying field work ran from July, 1927 through 1929 (6967-9); he did other miscellaneous work at Round Hills between 1921 and 1926; built the foundation for the "Charles W. Morgan" museum between November, 1924 and February, 1925 (6970); this was discontinued because Green said it would obstruct his view from the house of the ship and he wanted to see the ship from the house (6971).

On cross-examination by counsel for Texas, he said that to do these various jobs it was necessary to make application for permit to the Commonwealth of Massachusetts and to the Federal Government and Green instructed his foreman in making out the blanks to put in his residence as Terrell, Texas (6972-3).

On cross-examination by counsel for Florida, he testified that Green seemed interested in the various works up until around 1930 and they did not see him much after that; no improvements were started after that (6976-7); witness identified Fla. Exs. Nos. 28 and 29 as correct photographs of work done on the concrete foundation which was afterwards filled in (6978), and Fla. Ex. No. 37, a list of invoices rendered by witness to Green for work done at Round Hills between 1920 and 1937, aggregating $1,252,850.79 and to the Round Hills Radio Corporation, $140,575.60 was given in evidence (6981-2).

JOHN M. BULLARD, of Dartmouth, testified that he was an attorney at law practising in New Bedford and a member of the firm of Crapo, Clifford, Prescott & Bullard, which was founded in 1811 by Timothy Kaufman and is one of the oldest firms in Massachusetts; this firm was engaged in the litigation over the Estate of Sylvia Ann Howland, in which Hetty Green was concerned (6994); his first contact with Green was in 1922 in connection with obtaining a broadcasting license and he formed the Round Hills Radio Corporation for him in 1922 (6995); afterwards he caused it to be reorganized into a charitable corporation under the law of Massachusetts; witness identified Mass. Ex. No. 142, August 15, 1923, as the certificate of this Corporation (6997); this corporation still continues; that he has prepared a certified extract from the minutes of the Corporation and the same was given in evidence as Mass. Ex. No. 437 (6999, 1710-24).

He further testified that he had a number of conversations with Green about possible changes in the tax laws of Massachusetts referred to in his letter to Green May 29, 1930, Mass. Ex. No. 287, and in his earlier connection with him, had occasion to draft legal papers for him from time to time, in which Green directed him to give his legal residence as "Terrell, Texas"; that Green never changed these instructions; that the slogan of the radio broadcasting was "The Voice From Way Down East" (7031); that witness, as a member of the New Bedford Country Club, discussed with Green taking out a full voting membership, a resident membership, and when he mentioned that the Club was trying hard to sell bonds, Green asked what was the greatest amount any one had taken and witness told him $5,000; he said, "I will take that amount" (7032-3); that Green's social friends around New Bedford were confined to three or four families; towards the end, when he was not feeling well, he kept complaining about the thinning of his blood and said the doctor wanted to drive him from the seashore, but he did not want to be driven away (7034).

On cross-examination by counsel for Texas, he testified that Green, in connection with the formation of the Round Hills Radio Corporation and Whaling Enshrined gave his residence as Terrell, Texas, and his Post Office as South Dartmouth (7036); he designated himself as a resident of Terrell, Texas, in all papers witness drafted for him (7037-39).

Thereupon counsel for Massachusetts gave in evidence Mass. Exs. Nos. 438 and 439, letters from Green, March 22, 1918 and March 27, 1918, to Peter C. Keith, regarding the Joseph Howland Farm (7049-53).

At the hearing at Miami Beach, Florida, April 11, 1938, counsel for Massachusetts gave evidence tending to prove as follows:

Nick Natsis, of Miami, Florida, testified that he was employed by Green in November, 1935, at Star Island as help's cook and remained until six months after his death, leaving about May 3rd for Round Hills; that 24 servants were employed at Star Island and all of them went to Round Hills under orders from the steward (7452-5); that at Miami that Winter Green had a new Lincoln car with Massachusetts number plates and Mrs. Green's personal car also had Massachusetts number plates (7455-6).

On cross-examination by counsel for New York, witness testified that the new Lincoln car was purchased in New Bedford and came down with the Massachusetts plates on it (7457).

On cross-examination by counsel for Florida, he said that he did not see any Florida licenses on the two cars (7471).

Counsel for Massachusetts gave in evidence the following Massachusetts Exhibits:

Nos. 441 and 442 in July, 1922, relating to broadcasting activities at Round Hills (7483).

Nos. 443 and 444, correspondence with Green in September, 1926, thanking him for the assistance rendered to the New Bedford Kiwanis Club in helping cripped children of New Bedford with an outing (7487-90).

Nos. 445, 446 and 447, correspondence between Green and Alfred C. Bossom, architect, from September 3, 1919 on, relating to Round Hills; No. 448, correspondence from the files of the estate, called the Bossom file, listing fixtures, etc., for the "Green Residence" at Round Hills (7490-7500-7502).

No. 449, letter from Green to Bossom, April 30, 1920 (7512).

No. 450, letter from Bossom to Green, May 10, 1920, regarding changes and extras (7516);

No. 451, letter from Bossom to Green, May 10, 1920 (7522), in which he says:

"In accordance with your wish that if we do not hear from you, we would proceed with your house exactly as originally called for—really Colonel, I must confess I am pleased you have made this decision not to change, for we have been so frequently told that you expected this, or expected that which had not been called for, it really made the situation look particularly embarrassing.

The adherence to the original arrangement, of course, will not give you the most handsome house which undoubtedly Mr. Van der Putten wanted to give you, but it is what we understood you were desiring. We did not anticipate in the original estimates that you wanted a very grand mansion. You wanted a large home, but not over sumptuous. For instance, as you know, your contract called for wood staircases with wood balustrades, which will be very satisfactory from every point of view, but we were instructed that you wanted a marble staircase with an iron balustrade.

Under the circumstances, I believe you realize the difficulties that we have been endeavoring to overcome, but this decision on your part puts matters back to where you started out from and will in the end, I can assure you, work out along the lines that you discussed before the work was undertaken. The house is a large simple home, from which I am sure you will undoubtedly get a great amount of pleasure. Again, as regards the fixtures, you distinctly told us that you wanted fans underneath these in certain rooms, but in turn we received word that these would not go in. We are revising these fixtures back to the lines that you talked to me about" (7523-4).

No. 452, Green's reply, May 22, 1920, to Bossom (7527), which concludes with the statement:

"My contract with the Otis is for $4,000 or $5,000, the exact amount I do not remember. Mr. Zimm told me while in my office that the elevator would be put in according to the constructions of the blue prints and now they want $30,000 additional for the frame. I do not want a Mansion or Palace built over a freight elevator, so we will cut the elevator out" (7530).

No. 453, letter from Bossom to Green, December 16, 1920, in which he says:

"Your dining room, as you know, under the contract with the Howes Company is panelled in mahogany, but Mr. Vander-Putten in his specification wanted to have this painted. Naturally, I am sorry to see paint put on mahogany when we can make a very fine job, which I feel would be more satisfactory to you than paint. Whichever you desire I would like to do, but I would recommend that we use the mahogany finished the same way as your furniture that is going in this room" (7533).

No. 454, letter from Green to Bossom, December 20, 1920 (7537), in which he says:

"In regard to your letter of the 16th inst. paragraph #2, referring to contract with the Howes Construction Co. Mahogany will be perfectly satisfactory to me for the dining room—I would say that Mr. Vander Putten has nothing whatever to do with the house and I have told him that specifications called for in the original contract must be let alone. I also agree with you that mahogany is more appropriate and more elegant than any painted woodwork."

No. 455, letter from Bossom to Green, April 5, 1921 (7539), in which he says:

"I trust you found the house to your satisfaction and I do feel that it is going to be a very delightful home when you have it all completed. I would like very much to go up to South Dartmouth and go over the house with you" (7540).

No. 456, letter from Bossom to Green, May 18, 1921 (7542), enclosing drawing locating tennis court, etc., sketch of the granite and tile work under the portico.

No. 457, letter from Bossom to Green, June 13, 1921 (7545), giving an estimate of the cost of the additional granite and tile work for the portico.

No. 458, letter from Green to Bossom, June 13, 1921, accepting the estimate for this additional work (7547).

No. 459, letter from Bossom to Green, December 1, 1921 (7550), in which he says:

"Naturally I was exceedingly sorry to hear of the very hard time you have been having, and I trust that you are well on towards complete recovery.

In receiving the final check, as I did from you the other day, I want to let you know that, although the building conditions were during the time of the construction of your home more complicated than they have ever been in the history of the world, the intercourse that your building brought me into with yourself certainly was a most delightful experience. I might almost say a liberal education. Although the work is finished it would certainly be a delight on my part to continue the friendship that developed during that time.

I want to thank you for having entrusted the work to me, and I do sincerely hope that the home is going to be a source of great pleasure to you for many years to come."

No. 460, list of car movements for Green from New York to Marlin, Texas, and New Bedford and Miami in 1922, 1929 and 1932, from the records of The Pullman Company (7551-2).

Maurice J. Sullivan, of Galveston, Texas, testified that he was Manager for the United States National Bank Building and the Prudential Building in that City; prior to that was with the contracting firm of James Stewart, New York City, and employed by Alfred C. Bossom from July, 1919 to October, 1928, on E. H. R. Green's residence, South Dartmouth, the Magnolia Building, Dallas, Texas, the United States National Bank in Galveston, an addition to the Adolphus Hotel in Dallas and other buildings in Texas, Virginia and West Virginia as architect's superintendent (7556-7); that during the war he was civilian assistant to the constructing quartermaster at Camp Merritt at New Jersey and before that served with various contractors in New England; that he has examined N. Y. Ex. No. 90, architect's drawings, N. Y. Exs. Nos. 91 and 91-A and B, electrical plans for the Round Hills house; before going to the job at Round Hills he spent about three months at Bossom's office acquainting himself with the plans, details and specifications and had several conferences with Bossom and his associate architects (7559-60); that he went to Round Hills in July, 1919, and was there continuously Winter and Summer until it was completed to the smallest detail in July, 1921; he saw Green for the first time the latter part of July or the first part of August, 1919 (7560), and quite

frequently during the two years, probably 50 times; that he gave particular attention to the smallest detail throughout the construction; witness made daily reports to Bossom; he was an Englishman and left for England in June, 1926, before witness left the employment of his office (7561); they stopped operations in this Country shortly after 1928; in his daily reports, this job was designated "Colonel E. H. R. Green Residence;" saw Bossom from time to time and he never told him at any time that this was designed for some other purpose than a residence (7562), nor did Green ever make such a statement; about 1920, witness had a conversation with Green about electric outlets and asked him why he had so many and he replied, "I have never been in a house yet where there have been enough electric outlets and fans and I don't, don't want any unsightly wires running from one live plug, live outlet, all over the room, and I want to be able to pick up or put a fixture wherever I want it" (7563); witness has examined the plans of the Star Island house and found a profusion of outlets (7564); that the foundation walls of the Round Hills house were built of rubble stone, nearly 30 inches thick, the walls of the building were of masonry construction consisting of granite base with a common brick construction about 18 inches thick and the interior of the house was of reinforced concrete columns, floor slabs and framing; the house was not steel framed; the only structural steel used was to carry the roof supported by small steel columns to the third floor; they rested on small steel columns carried through to the basement; that the testimony of the witness Howes that it was constructed exactly like an office building or apartment house, with a steel frame, was not correct (7564-6); and thereupon the witness, by using Mass. Ex. No. 461, gave further testimony as to the construction of the Round Hills house (7566 to 7584).

He further testified (7576) that there were no concealed plumbing fixtures and never heard from Mr. Bossom or from Colonel Green or any of Bossom's assistants that there were plumbing lines installed to be introduced to or converted for use in pantry sinks, etc., pertaining to an institution or hospital; that the third floor was completely finished and not left open (7577); that neither Colonel Green nor Mr. Bossom ever told him that although it was called a residence on the plans it really was not; nor were the interior partition walls constructed in such a manner

that they could be easily removed; that in the main living rooms of the first floor were fireplaces and the chimneys of those fireplaces extended from the foundations in the basement through the first, second and third floors to the roof (7579); that the floors in the house were oak and outside was a terrace extending from the sun room along the east front, which was tiled to make dancing easier on the terrace (7580); that if Chamber No. 7, for instance, were divided so as to make two rooms, each one with a window, would be approximately 8 feet 9 inches wide by 8 feet 10 inches long (7582), and Chamber No. 1, Mrs. Green's, if similarly divided, would make a room 12 feet wide by 30 feet 6 inches long approximately and Colonel Green's chamber would be the same (7583).

The witness further testified that he talked with Colonel Green about the electric fans and he said that when he was living in Texas they had such fans and he wanted them in his house but made them reversible or "updraft" so that when he was sitting in the library reading he wanted to pull the heat coming from the radiator to the ceiling and throw it down to the floor and circulate it in the room, and "he intended to use his fans in the Winter time" (7584-5); that in the late Winter of 1920 and in the early Spring of 1921, Green said he was anxious to get into his house, he was tired of living in an apartment in New York and he wanted his home finished (7585); that in one of his conversations with Colonel Green he told him that he had been to Wellesley the day before to enter Ruth Lawrence and that he considered it a good College, one of the best in the Country and besides that "I want Ruth Lawrence to be near home" (7586); that he had a conversation with Mr. Hartwig, chief designer in the office of Alfred C. Bossom in the latter part of September, 1927, and asked him if at any time there was any real idea of an institution; he said, "Yes, there was, but when they got working on the drawings or sketches, preliminary sketches, in trying to work out an institution when the primary reason was a residence, they found they could not do it and entirely abandoned the institutional idea" (7589-90); that he saw Colonel Green in Dallas, Texas, some time about May, 1922, and asked him how he enjoyed his home or residence and he said he was very well pleased with it; that while the work was in progress, Green was in good health and walked under his own power with a cane; he never made a visit to the house

without going entirely through the completed portion and climbed up the temporary stairways, etc. (7591); that there was an intention at one time and a drawing was issued for putting Round Hills House on the frieze entablature over the portico, but it was abandoned (7592); he never saw the tablet with Colonel Green's initials on it described by the witness Neyland (7594).

On cross-examination by counsel for New York, he testified that the conversation with Hartwig took place in his office on East Forty-third or Forty-fourth Street, New York City; that they were close friends (7603).

On cross-examination by counsel for Texas, the witness testified that from one-half to two-thirds of the electric outlets at the Round Hills house are blind outlets (7623); that in the Star Island house a profusion of blind outlets are shown on the plans (7624); that if the stone was brought to Round Hills with Green's name or initials on it, he never saw it (7627).

On cross-examination by counsel for Florida, witness testified that he never went through an architectural or engineering college (7634).

On further cross-examination by counsel for New York, he testified that none of the people employed on the Round Hills house during the construction ever said anything to him about the house being designed for an institution (7656-7).

Counsel for Massachuetts gave in evidence Mass. Ex. No. 53, a letter to Lucius Boomer, President, The Sherry-Netherland, from Green, December 29, 1932, in which he said:

"I would much prefer to continue under present arrangements, with the understanding, that commencing January 1st, 1933, my rent for apartment T.24 with terrace be billed to me at 75% of the amount I have been paying" (7663).

Counsel for Massachusetts called attention to the fact that in connection with Tex. Ex. No. 277, the original poll tax receipts of Colonel Green, there was no evidence that he had voted in Texas after 1920. This was conceded by counsel for Texas (7665-7).

James A. Dixon, of Miami, Florida, testified that he was a member of the Bar and of the firm of McKay, Dixon &

DeJarnette and is curator of the Florida estate of Colonel Green, appointed December 7, 1937 (7668-9); prior to that time Mrs. Green, as Ancillary Administratrix, was acting as representative of the estate; since his appointment, he has been in charge of the Star Island house and had it placed in its complete furnished condition for view with the exception of rooms in which the contents were removed by Mrs. Green as the result of her settlement with Mrs. Wilks (7670); also had the grounds dressed up to make the place look as attractive as possible (7671); that at the Star Island house are a number of films of moving pictures taken at various places, in some of which Colonel Green appeared, which show various activities in and about the property (7672).

On cross-examination by counsel for Florida, the witness testified that two tables were taken out of the Palm Room—a Louis XIV and Marie Antoinette, and a rug was taken from Mrs. Green's dressing room with the furniture, and two small rugs from the lower floor (7681).

Charles W. Keyes, of Coral Gables, Florida, testified that he was a representative of the Metropolitan Life Insurance Company and knew Green while he was a systems expert for the Remington Rand Company dealing in filing systems (7688); that in the latter part of 1930 or the first part of 1931, Green applied to him for some method of filing currency bills so they could be displayed and he designed a contraption for holding and displaying the bills without being handled (7690); the latter part of April, 1931, he went to Green's Star Island home and Green said he was going to leave pretty soon and witness asked him where he was going and he said, "I am going back to Massachusetts;" witness said, "Colonel, you have such a beautiful place down here why don't you make this your home," and he said, "Well, this is just a place I come to reside in the wintertime; I have a beautiful estate up there (7692).

On cross-examination by counsel for Florida, witness said the Star Island home was outstanding; the gardens were beautifully kept and there is no better place around anywhere; it was a show place in Miami Beach (7693).

Thereupon, counsel for Massachusetts announ-ed his testimony closed.

Florida Evidence

At the hearing in New Bedford, Massachusetts, in February, 1938, counsel for Florida gave evidence by the following witnesses tending to prove:

HENRY F. LONG, recalled as a witness for Florida, testified that he had been Commissioner of Corporations and Taxation for Massachusetts since 1920; that the Massachusetts income tax law was passed in June, 1916, effective January 1, 1917, and has been in force ever since, and that it was his duty to administer it; that this law requires all inhabitants of the State to make a return of their taxable income annually and he has endeavored to enforce it to the best of his ability (7058-60); the law does not require a return of all income regardless of amount, it is only when income is subject to tax imposed by the Act that they are required to make a return, which begins at $2,000; that Massachusetts has a classified income tax, really four laws in one; the business income, which is that which flows from professions, trade or employment to which the $2,000 limitation applies, a tax on annuities and a tax on gains from dealings in intangibles, and the fourth class is laid on taxable interest and dividends; that from the returns there are certain exclusions and deductions for exemption; that it is his duty, when it comes to his knowledge that an inhabitant of the State who is subject to the Act refuses or fails to make a return, to assess him under the law by notification to file and if he does not file, to assess in such amount as the Commissioner may determine, plus a penalty provided by the statute (7065); a notice to file such a return was sent to Green, but no assessment was made; this notice was mailed some time in the early part of 1936 to South Dartmouth, Massachusetts, but witness did not know where he was; nothing further was done up to the time of his death and nothing has been done to follow it up since then (7067); in November, 1928, witness had an interview with Green at South Dartmouth by appointment made through the Assessor of Dartmouth (7068), and identified Fla. Ex. No. 39 as a photostat copy of his letter to Green November 20, 1928, confirming the appointment (7070); that he called upon him at his home before Thanksgiving Day, 1928 and discussed the matter of paying income taxes to Massachusetts (7072); nothing further was done in his official capacity

between that time and the notice sent in the early part of 1936 towards getting a return from him on his taxable income in the Commonwealth of Massachusetts and Massachusetts has never received an income tax return from Green and did not resort to any process of law to compel such a return until the notice sent in 1936 (7073); under the law, they have two years in which to compel a return from an individual subject to the Act; within two years an assessment may be laid; they are not required to wait the expiration of the two-year period but the assessment may be levied within 22 days; if a return is not made, another notice is sent before the assessment is levied (7074); in the case of Green, this has not yet been done (7075).

On cross-examination by counsel for Texas, witness admitted testifying in the probate proceedings in New York that Green on the occasion of his visit said that he had filed his Federal returns as a resident of Texas, wanted to consider himself a resident of Texas and while he felt very kindly towards Massachusetts he did spend a good deal of time there, but he was not of the opinion that the time had arrived when he wanted to establish himself as a citizen of Massachusetts and a taxpayer (7077).

On cross-examination by counsel for Massachusetts, witness testified that at the time he talked with Green he had no information except what Green told him that he did have a legal residence in Terrell, Texas (7078-9), and did not know that he did not have any residence in Terrell or that he did not have any place of abode in Texas after 1911 (7079).

On cross-examination by counsel for New York, he testified that he was a member of the Massachusetts Bar and a past President of the New England Tax Association and of the National Tax Association, and had connections with various other such associations; that he sought this interview with Green and when he went to Round Hills saw the house; that Mr. Howland, the Tax Assessor for the Town of Dartmouth, was present at the interview; that he is now too ill to testify (7081).

Witness further said that under the Massachusetts law, income taxes cannot now be levied against Green or his personal representatives for any period prior to January 1, 1935 (7083); that under the law of Massachusetts, all inhabitants of the Commonwealth are required to make a return of income from all taxable interest and dividends, re-

gardless of the amount of the income—interest from savings bank deposits or from United States Government bonds or State or Municipal bonds of Massachusetts are excepted (7083).

SETH T. COLE, recalled as a witness for Florida, testified that he was Special Assistant Attorney General in charge of this case for New York and in that capacity he conferred with Edward Harris, a witness who testified at a previous hearing, and heard Attorney General Landis ask him whether the architect had talked with him about the designing of the house at South Dartmouth and he stated that he had not; that he asked him the same question on cross-examination; that witness did have a conversation with said Harris December 16, 1937, in his room at the New Bedford Hotel, with no one else present, and made shorthand notes of the conversation; that Harris said to him that the architect said that the house was designed so that it might become a hospital (7086-7).

On cross-examination by counsel for Massachusetts, he testified that he had not made a note in his shorthand notes of the question which elicited this reply from Harris; that the answer of Harris is not consistent with the suggestion that the statement might have come from one of the workmen instead of from the architect; that all his notes show is that the architect had said that that was so (7089).

THOMAS TULLOUCH, of New Bedford, testified that he was employed by Green at Round Hills from 1932 but he had been employed around the farm, as carpenter, by his uncle, the superintendent, from 1929 (7091-2); that he took the superintendency and as such had charge of the farm, garden, the cattle, the greenhouse, etc. (7093); that there were about 150 acres of workable land, six horses, three of which died in 1934 or 1935 and were not replaced; when he spoke to Green about it, he said it was not important to have horses and he would motorize the place but he never did; he also had 30 or 40 goats and eight cows which gave milk for the house; the vegetables were used at the house; they had from 38 to 40 hands in Summer and 22 in Winter; there was no profit in it; he also had charge of cleaning the beach, clear-

ing the road and airport; there was quite a lot of waste paper and swill to be cleaned off the ground caused by the community coming down to the beach to bath; they came down there by the thousands between July and the latter part of September; they bathed from their automobiles, where they dressed and undressed (7096-7); they put tents on the beach and used Bon Ami on the windows to shield themselves; the debris came from the fruit, vegetables, etc., that they left on the road (7098); it took from eight to ten men to clean up; they had "hot dog stands" on the grounds to feed the people; all kinds of people came there and on the north end of the beach there was a Jewish Colony, called Little Jerusalem (7101).

Thereupon Fla. Exs. Nos. 41 to 45, photographs of the beach, were identified by the witness and given in evidence (7104-7108).

On cross-examination by counsel for Mrs. Wilks, the witness testified that Green permitted the people to come there in great numbers and was fond of having the common people around him; the majority came from the neighborhood of New Bedford (7109).

On cross-examination by counsel for Massachusetts, he testified that Green used to watch the bathers and stay a considerable time (7110).

William C. Vander, of New Bedford, testified that he became acquainted with Green in 1929 while working for an electric contractor on the hangar at Round Hills; that Green asked him to look at the lights and the next day asked him to take charge of the electrical work at Round Hills, which led to his employment (7113-14); in 1929 until possibly 1934, Green displayed considerable interest in the hangar and other activities and then seemed to lose interest in all of the activities on the estate; he did not come near the airport, did not go to the beach and only went to look at the atom-breaking experiments once and then only for a short period; in the fog dissipation activities he displayed considerable interest at first and afterwards seemed to lose all interest; he seemed to be quite interested in the "Charles W. Morgan" but after witness had been there for five years he suggested lighting the tablets commemorating the different names of the founders and Green told him to leave

it just the way it was; that nothing was done to repair the swimming pools during the last three years and they just crumbled away; that when witness first arrived he wrote to him about some leaks in the roof of the big house and his reply was that he was about ready to take down the old roof and substitute an old-fashioned square and tile roof and implied that he was sick and tired of it all.

Witness identified Fla. Ex. No. 46 as a letter he had received from Green regarding the plumbing, roof, etc., in the big house and the same was given in evidence (7127).

He further testified that Green's interest in the activities at Round Hills began to wane about 1934 and from then on he evidenced extremely little interest; that he seemed to lose all interest in the airport (7123).

Witness also identified Fla. Ex. No. 47, a letter from Green about the lighting of the tablet and the same was given in evidence (7125-7133).

The witness further said that he kept a record of airport landings during the night; that the first three or four years of his service they were quite frequent and after that they practically ceased; that during the Summer of 1934, two or three a week on an average landed there (7131); that in the Fall of 1929, he had a conversation with Green about remaining longer at Round Hills and Green said there were certain reasons why he would never live there all the time (7132).

Fla. Exs. Nos. 48 and 48-A, a letter and notice to Green July 8, 1930, from the Department of Public Works, concerning a public hearing regarding rules for the airport, were given in evidence (7135-6).

At the hearing at Miami, Florida, April, 1938, counsel for Florida gave in evidence the following Exhibits:

No. 50, deed dated April 24, 1924, from The Miami Ocean View Company to Green (identical with Tex. Ex. No. 402) (7899-7900); No. 51, letter to Green from The Miami Ocean View Company outlying work to be done at Star Island (7907-9); No. 52, photograph of Star Island as it was originally in 1921 (7909); No. 53, photograph of Star Island Yacht Club (7910); No. 54, photograph of the main room in the Club (7911); No. 55, letter to Green October 25, 1924, from The Miami Ocean View Company reporting progress in work (7913); No. 56, deed to Green from The Miami Ocean View Company, February 12, 1925 (same as Tex.

Ex. No. 404); No. 57, deed to Green from said Company, same date (same as Tex. Ex. No. 403); No. 58, "Restrictions on Star Island Property" (7919); No. 59, letter from Martin L. Hampton, architect, April 21, 1925, to Green, bearing Green's approval, for plans of Star Island residence (7924); No. 60, application for building permit of Star Island house (7929); No. 61, letter from John B. Orr to Green, October 13, 1925, regarding freight embargo interfering with progress of Star Island house (7933); No. 62, telegram from Green to Virginia S. Ruggles, February 9, 1926, regarding carpets for Star Island house (7936); No. 63, telegram from Green to Virginia S. Ruggles, February 18, 1926, regarding furniture for Star Island house (7937); No. 64, copy of voucher, March 11, 1926, issued to Martin L. Hampton, architect, for services (7939); No. 65, list of trees, shrubs and palms for Star Island grounds (7940-44); No. 66, letter from Green to Barth and Company, New York City, April 3, 1926, regarding alterations in house (7945); No. 67, letter from Green to Charles E. Raphael, New York City, regarding storage of valuables taken out of house during alterations, stating, "We leave the latter part of this week for Marlin, Texas, and our address will be Arlington Hotel for the next thirty days, or until about May 20th, when we hope to be starting toward the North" (7948); No. 68, application for building permit, August 21, 1926 (7950); No. 69, summary of approximate estimate for work at Star Island, aggregating $103,259 (7956); No. 70, letter from The Exotic Gardens, November 24, 1926, to Green regarding storm damage to property (7961); No. 71, label headed "Green Star Island Grove—Oranges and Cocoanuts—Miami Beach, Florida" (7964); No. 72, letter from Raphael Studios to Green, November 24, 1926, reporting progress in work (7968); No. 73, letter from Barth & Company, February 5, 1927, to Green regarding payment for furnishings (7971); Nos. 74 and 75, correspondence between Raphael Studios and Green in March, 1927, relating to furnishings (7974); No. 76, letter to Barth & Company, June 28, 1926, asking them to hold all shipments to Star Island because house was being "entirely remodeled" (7978); No. 77, letter from Barth & Company to Green, June 30, 1926, regarding stoppage of work on carpets and other furnishings because of remodeling (7981); No. 78, letter from Raphael Studios to Green, August 26, 1926,

regarding furnishings and alterations (7986); No. 79, letter to Green from Barth & Company, September 30, 1926, regarding contracts made for furniture and furnishings (7990); No. 80, letter from Barth & Company to Green, November 23, 1926, transmitting list of furnishings (7992); No. 81, application for building permit, March 27, 1928 (7994); No. 82, order from Green to Art Metal Storm Shutter & Awning Company, April 9, 1928 (7999); No. 83, order from Green to same Company, April 11, 1928 (8001); No. 84, letter from Green to Nolan, May 17, 1928, regarding removal of furniture for repairs (8004); No. 85, estimate of Reed Furniture Company to Green, May 17, 1928, for furniture repairs (8006); No. 86, building permit, June 7, 1928, for Star Island residence (8009); No. 87, letter from Art Metal Storm Shutter and Awning Company to Green, June 9, 1928 (8014); No. 88, letter from Orr & Company, July 16, 1928, to Green regarding electric fixtures (8017); No. 89, telegram, August 8, 1928, to Green from Orr & Company reporting no damage to house by storm (8019); No. 90, letter to Kiehnel & Elliott, architects, November 4, 1929, enclosing sketch of proposed changes in residence (8022); No. 91, application for building permit (8025); No. 92, letter from Green to Kiehnel & Elliott, architects, November 30, 1929, enclosing list of repairs (8029); No. 93, photograph of portion of the Green residence taken January 2, 1930, and No. 94, photograph showing boat "Colonel" and residence taken same date (8031); Nos. 95 and 96, receipted bills of Victor Company for cabinet for Star Island house (8032-4); No. 97 bill of The Miami Ocean View Company to Green for expenditures on Star Island lots (8035); No. 98, application for building permit, September 9, 1931 (8038); No. 99, letter from Kiehnel & Elliott, architects, December 12, 1932, to Green regarding insurance loss on furnishings (8043); No. 100, application for building permit for remodeling house, August 4, 1933 (8045); No. 101, letter to Green, August 14, 1933, from Lowry Wall enclosing list of damage to Star Island home by fire June 26th, together with adjustments, etc. (8050).

JOHN MCKIE, of Miami, testified that he was Vice President of John B. Orr, Inc.; that their first contract with Green for work at Star Island in 1925 was $88,000, increased

by extras to $114,000 (8053-56); they remodeled the old Yacht Club into a residence; the outside walls of the big room, now the living room, were all that was left; later they were employed to remodel the big room, putting in an ornamental ceiling and staircase, at a cost of about $92,000 or $93,000; the ceiling was superfine and the work as costly as could be obtained; Kiehnel & Elliott, of Miami, were the architects and in 1928 witness' Company put up an expensive addition to the Star Island house, costing $70,000, which included some additional alterations in the main house and the building of men's servant quarters on the west side, called the "Bull Pen;" this was all of piling and concrete frame, block walling, stucco and ornamental stone—first-class construction; the tile work was the most elaborate of any residence in the neighborhood; the Greens were occupying the house when their last work was done in 1928 (8056-60).

On cross-examination by counsel for New York, witness testified that the ornamental work such as the ceiling and staircase was of a very costly nature and the house was somewhat unusual (8061). On cross-examination by counsel for Massachusetts, he testified their first work lasted from June, 1925 into 1926 and was completed in Green's absence; during the Winter Green came down but witness never saw him; the work on the second contract started in August, 1926, and was carried into 1927; Green was not present and took no active interest in the work of construction under their contracts (8062-4); the last work started around March or April, 1928, and was done principally during the Summer season; witness dealt directly with the architect and does not remember whether Green was there; witness was at the job most of the time and did not meet either Colonel Green or his wife (8065).

CHARLOTTE E. FRENCH, recalled by Florida, identified Fla. Ex. No. 49, photostat of a plat of Star Island, which was given in evidence (8071), and testified that having refreshed her memory she found that Green first bought Lot 22, a vacant lot, in 1924; in 1925, he bought Lot 46, with the club house and the same year bought Lot 21 adjoining (8071); that The Miami Ocean View Company developed Star Island, building it up from the bottom of the Bay (8072).

Witness identified from plats other homes on Star Island and further testified that people owning them claimed Star Island as their legal residence and voted there (8081-2).

Frank N. Deigaard, of Coral Gables, Florida, testified that he was a building contractor and that his firm did some alteration work for Green at Star Island in the Spring of 1931; they replaced the tile and gravel roof and in the Fall of 1931, built a new addition—the east wing—at a cost of $85,000; it was a concrete building of tile and stone; everything was the best available and a large portion of the first floor and staircase was marble, carved by hand—very expensive work; the sash were solid bronze imported from England and alone cost about $25,000 (8085-8); the roof was of Cuban tile—the highest priced tile—the best type of roof construction known to the trade; all of the stone columns were cast stone, hand carved and styled (8089); they also made some repairs in the old portion of the house damaged by fire and rebuilt the elevator and installed a heating plant in the new portion (8091); the new part was where the Greens lived; it was constructed as a comfortable home, regardless of expense (8092).

On cross-examination by counsel for Massachusetts, witness testified that the house had more electrical outlets than was usual at that time but it has since become more usual; there were a dozen or fifteen outlets in each bedroom (8095); Green came there while the work was going on; he would come over casually in the morning before going out to drive, staying a very short time (8096); that if the plans show that some of the bedrooms contained 25 outlets, that would be an extraordinarily large number (8099).

On redirect examination by counsel for Florida, he said none of the outlets were concealed and further testified that the building was a Spanish type of architecture (8100).

William P. Baird, of Miami, Florida, testified that he was employed by Green in 1932 to take charge of the maintenance of the Star Island property; everything connected with the upkeep of the place came under his jurisdiction as superintendent; he remained until Green's death; his instructions were to keep up everything in a permanent way,

Summer and Winter; the grounds were kept in perfect shape; there was nothing around Miami Beach or Miami any better; Green said the desk he used at Star Island was his mother's desk and he prized it very highly; witness raised it so his chair could be gotten under it (8102-5).

Richard Plummer, of Miami, Florida, testified that he was an interior decorator; did work on the furniture and furnishings in the house between 1928 and 1936; the house was beautifully and expensively furnished, and comfortable; there was nothing lacking to make it a home; everything that was in the house was very fine; most of the furniture and furnishings were individually designed for the rooms (8110-15).

Mrs. Charlotte Donn, of Miami Beach, Florida, testified that she was employed by Green as caretaker at Star Island during the Summer and that her husband was superintendent of the grounds; that she had been there since 1927, with the exception of two Summers (8122-4); she identified Fla. Ex. No. 102 as a photograph of the front of the main entrance of the old part of the building, showing two Gs above the center of the main entrance (8124); and on the door shown in the photograph as the main entrance to the house is another GG under the coat of arms. Said photographs were given in evidence as Fla. Exs. Nos. 102 and 103 (8127).

She further testified that Fla. Ex. No. 104 is a photograph of a similar GG in the front of the entrance leading to the water (8129). She also identified Fla. Exs. Nos. 105 and 106 as other photographs of the Star Island house and testified that after Green's death two chairs, a coffee table and a round center table were taken out of the main living room—all very fine pieces—and put in storage by Mrs. Green; also the furniture from her bedroom and dressing room and the draperies from the dressing room (8133-5); that the dock and posts were supposed to be Venetian (8136); that Green planted about 1600 rose bushes each year; during the time she was there everything was kept in the very best condition; that the desk in Green's room, which he used, was understood to have been his mother's (8140).

On cross-examination by counsel for New York, witness testified they had about 28 servants to come down with them or a few days before and left when they left; the house was practically closed but not locked up until the Greens returned the following year (8140-1); one of witness' duties was to open the doors and windows every day and keep the house well ventilated; during the hurricane season, between July 17th and October, it was boarded up; there are 51 rooms in the house (8141-2).

On cross-examination by counsel for Massachusetts, she testified that she counted the outlets and found 50 in the palm room, of which were there 28 double plugs; 25 in Mrs. Green's bedroom, 25 in the dressing room, and in Green's room considerably more (8147-8).

In response to question by counsel for Florida, witness said these outlets were for use and not hidden (8151).

On being recalled, the witness further testified there were three doors to the elevator shaft, with a G on each panel, four inches high (8167), and identified Fla. Ex. No. 107 as a Christmas card received from Green, on the reverse side of which was a picture of 46 Star Island (8171-2).

On cross-examination by counsel for New York, witness testified that most of the furniture in the big room came off the yacht "United States" (8173), and identified Mass. Ex. No. 462 as a memorandum of the outlets in the house (8176).

On cross-examination by counsel for Mrs. Wilks, the witness testified that she had lived in Florida for fifteen years and had actually lived in the Star Island house all through the Summer months for a great many years; that it was a very livable place during the Summer months but that Green only remained there during the Winter season (8184).

On redirect examination by counsel for Florida, she testified that the bedrooms of Colonel and Mrs. Green and the sun parlor were air-conditioned and there was an electric fan in every room (8186).

James Donn, of Miami, Florida, testified that he had been a resident of Miami for about 23 years; that Star Island was pumped in from the Bay and he had been familiar with it from the beginning; that he was engaged in the

nursery and landscape business and was President of The Exotic Gardens, Inc.; that he met Green in 1924 at Star Island, through John Levi, its developer; Green made an agreement with him to landscape the property—the lot with the Yacht Club building on it and the adjoining lot; afterwards made a contract with him for the other lots he acquired; that as he acquired the additional lots and made the additions to his home, they were given the work of landscaping the property; the first contract was for $3,000, and after that there was no limit as to cost, and the landscaping and maintenance were handled together; after the first contract, it was a question of maintaining the property and doing the necessary extra planting on a monthly basis; Green spent about $12,000 annually on his shrubs, trees and maintenance; every Fall the gardens were spaded up and about 10,000 annuals were planted; he was extremely fond of roses and they planted 1500 rose bushes every year; whenever he heard of a storm, his order was to restore the palms and other trees and plants to their original state; the palms on the property today were the large ones supplied by his Company—the center avenue of Royals and coconuts are all large trees; in the early days when they were put in the Royal palms were much more expensive than they are today, being worth approximately $250 apiece, the coconuts about $75 apiece (8190-98); they planted the Bougenvillia vines with the usual annuals; the roses were in addition; the annuals were planted in what was called the formal garden, extending from the main entrance to the main driveway; Green was much interested in the public and derived much pleasure in seeing people driving around the Island stopping to view his formal garden, which was in full view of his original bedroom in the old part of the house; he was always definite in his instructions that that part of his property must always be a show place; it was a parterre design; Green was always deeply interested in the flowers and palms and his instructions were that he wanted his place a show place of Miami and on no account should they fail to have the flowers in bloom when he arrived; the only censure witness ever received from Green was on one occasion when the annuals were late because of a hurricane (8199-8200); the grounds, shrubs, etc., excelled anything on Star Island, Miami or Miami Beach, except the James Deering Estate; Green's property was better maintained

and had a higher type of landscaping than any (8202); in the early years 1928, 1929 and 1930, witness would see Green 40 or 50 times during the season but in 1935 and 1936, when his health became so poor, he didn't see him often (8202); that "he was what is called a Winter resident;" he had his own home and sometimes stayed here later, once staying until June; he has heard him say he was glad to get back to Miami and knew he could enjoy the next few months "without his feet getting cold"—rather a humorous remark with him (8203); he went out daily in his automobile, when well, both morning and afternoon; he enjoyed talking with the shop men and policemen and people generally (8204-5); his attitude towards the people was very friendly and they, especially the policemen, regarded him as a benefactor; the City of Miami gave him a silver star—an official Municipal star—which gave him special privileges; Green said Miami seemed to agree with him better because of its mild climate—he could depend on going out daily without worrying about the weather—could use his automobile all the time (8206); he had a special automobile with a movable glass top; Green did not entertain much but Mrs. Green did and witness supplied the flowers; he had them construct a little concealed niche in the balcony where he could see but not be seen at a party given at his home by Mrs. Green (8207-8); witness has heard him say in a conversation how much he enjoyed Miami and being able to drive out in January, February and March and see roses picked for the table (8210); Green was always very generous, especially to boys, and witness received an annual check of $1,000 as his contribution to the Community Chest and a contribution of $3,000 or more to the Boys Band (8211); Green was always interested in joining with others in any type of beautification that would benefit the community (8211); he said it was a source of real pleasure to look out and see flowers blooming in his formal garden; he instructed witness to plant a great many large bearing coconut palms because he wanted to ship the coconuts to friends in the North and he had labels printed with coconuts on them showing they came from Florida (witness identified Fla. Ex. No. 71 as one of the labels); he said several times he would like to have stayed longer but the help and Mrs. Green were always anxious to get away and were always worrying him about the mosquitoes; that by going North

too early sometimes they ran into rather boisterous weather and if he had his way he would stay late into June all the time (8212-14).

On cross-examination by counsel for Massachusetts, witness testified that Green always enjoyed meeting the common everyday people and it gave him pleasure to have them appreciate what he was doing and to see them enjoying his place; that he referred to Round Hills many times and said that lots of visitors visited Round Hills and enjoyed the grounds and the beach (8219-21).

On redirect examination by counsel for Florida, witness testified that a few people would come into the estate but most respected the "Private" sign at the entrance and viewed the formal garden from the driveway; that 46 Star Island faced the Flagler Monument, across the main waterway (8231), and in response to question by counsel for Massachusetts, further testified that the place contained three acres altogether (8232).

Counsel for Florida gave in evidence Fla. Ex. No. 108, a list of the movements of Green's private car, from the records of the Florida East Coast Railway Company (8234), and No. 109, a letter from Green to the Assistant General Passenger Agent of the Atlantic Coast Line Railroad Company, December 10, 1929, requesting a five room private car (8238); also Fla Ex. No. 110, a telegram from Green, May 5, 1933, to the Lake Placid Club inquiring for reservations, in which he said, "Stella is after me to get away on account of mosquitoes and flies, but otherwise weather here is fine" (8240).

Marguerite H. Allen, of Miami Beach, testified that she was a caterer and served two big parties and several smaller affairs each year for Green at 46 Star Island (8243); on the night of March 16th or 17th, 1930, they gave one of the biggest parties ever given in a Miami home; witness furnished everything, including several hundred dollars worth of flowers; her bill was approximately $2200; the grounds were electrically illuminated and the old houseboat used as a dance pavilion; Green was able to see it from the balcony above (8245-7); this party was attended largely by the people of Miami and Miami Beach; flood lights were turned on in the garden; Green was very much pleased with

it (8249); on another occasion, Mrs. Green had a large Easter party for 75 or 100 of her more intimate friends and they gave a large Easter party for children (8251); that Green did not want any liquor served if there was any way to do without it; he said the house would have to be sacred (8253).

E. G. Sewell, of Miami, Florida, testified that he had lived there 45 years and was formerly President of the Chamber of Commerce, Mayor and Commissioner and has seen the development of Miami and Miami Beach during that time; he met Green as a guest on his boat in the marine pageant in the Spring of 1928 in which the boat was entered (8257-8); from then on visited the Green house in the evening on occasions; the Greens had an elaborate party of 200 or more which witness and his wife attended; that at the Shriners Convention in May, 1928, when he was Mayor, there was a marine pageant in which Green entered two boats (8259-61); on another occasion there was a Venetian fancy dress ball at the Nautilus Hotel, which was attended by Mrs. Green and a party of 25 guests (8263); Green was interested in the City's welfare, in the general progress of the City and local improvements, contributed to the Boy Scouts, Boys' Band, Bugle Corps and an operating room at the Jackson Memorial Hospital (8264-6); he was interested in boats and kept two or three yachts, including the "show boat", manned and ready for use (8267); he showed every interest a "Winter Miamian" could show in the welfare of the Community; the City gave him an official star because of his public spirit; he always expressed himself as being glad to get back to the wonderful climate (8268-70).

On cross-examination by counsel for Texas, witness said Green talked about Texas a good deal and on one occasion when witness asked him about having the name of "Galveston" on one of his boats Green said, "I lived in Texas so long I consider this a home port" (8278); he told him about living in Texas a number of years and the things he did there, but while living at Miami Beach he never told him he considered his home in Texas (8283).

On cross-examination by counsel for Massachusetts, witness said that in conversations with Green he discussed Round Hills, especially in the Spring when they were getting ready to go North, and mentioned the experimental work

and activities up there (8296-7); the subject of his becoming a resident of Florida was never broached by either of them (8299).

Eugene Franklin Holland, of Miami, Florida, testified that he was an electrician; that on one occasion, probably in the Spring of 1930, he supervised the temporary lighting of the grounds of 46 Star Island for a party given by the Greens; several thousand lights were strung around the trees, driveways, etc.; about seven and a half thousand lights were distributed around the grounds, about the "show boat" and the "Mabel G." (8312-13); he also had charge of the electrical work on the new east wing of the house, which was as good as could be obtained, and there were plently of outlets, but no concealed outlets (8315); on one occasion while doing some work near his bedroom, Green told witness, when he asked him how he liked Florida, that he liked the weather which permitted him to go out more than any other place (8317); that after a slight electrical fire in the dining room in 1934 or 1935, Mrs. Green ordered the room repaired in a permanent way and said "she did not want her home burned down" (8316).

Fla. Ex. No. 111, receipted bill of The Brown Electric Company, March 23, 1930, for electrical decorations for the party at Star Island March 15th, 8936 outlets at 20¢ and various flood lights, etc., aggregating $6,869.47, was given in evidence (8326).

Robert A. Gideon, of Miami, Florida, testified that he was a furniture salesman and first met Green in 1927 or 1928 as a member of the Publicity Department of the City of Miami in connection with the night pageant for yachts (8330-1); that Green entered one of his boats and wanted to make it the finest boat in the pageant; it was the gaudiest thing that ever sailed the water, it had more colors and lights on it than witness had ever seen before and some of the finest looking and best dressed women that night were aboard the boat; this was one of the outstanding local events (8331-2); witness developed the Bay Vista Park and approached Green for aid, who said, "Certainly I will do something—you know this is my home, too—you have been visiting me long enough over there to know it is my home as well as

yours—if you people will get that park built, I will build you a swimming pool;" later, when the City took it over and charged admission, Green lost interest and said it is no longer a people's proposition, the City owns it (8335).

Miss Jefferson Bell, of Miami, Florida, testified she was on the staff of the Miami Herald Newspaper as society editor and knew Colonel and Mrs. Green and attended social gatherings in their Star Island home; she attended an evening party given by Mrs. Green for 200 or 300 guests, at which there was dancing on the boat (8341); Mrs. Green also gave a luncheon at the Surf Club, one of the exclusive clubs; she gave large parties once or twice a season (8342); Green did not go out a great deal but Mrs. Green was very active in the social life and Colonel Green in the community life but witness never saw him at parties (8345-6); Mrs. Green was popular in receiving and serving at parties of others (8352).

George Rodearmel, of Miami, Florida, testified he was a ship master and was employed by Green in the Spring of 1935 as Captain of the "Mabel G." and the "Isola Stella;" the first was a 62-foot express cruiser used for short runs and the latter was a sort of a gondola used for decorative purposes at home (8355); both boats stayed in front of the house and when the Colonel left on his vacation, were laid up at the Fogal Boat Yard; about ten days or two weeks before the Colonel arrived, witness was instructed to have the boats in front of the house and ready for use (8356); they were all manned and ready for service; the "Mabel G." had "Galveston" on her stern and hailed from New York, built in 1925 (8357); the "Isola Stella" had "Star Island, Miami Beach, Florida;" she was built in the Miami River (8358); no expense was spared in keeping them in condition at all times; they were kept like a baby grand piano; Green did not go out on the boats or use them personally in witness' two and one-half years of service but Mrs. Green would go out with guests (8359); Green also had the "Friday" in the storage shed; she was registered from Miami, Florida (8360).

Fla. Ex. No. 112, certificate dated February 29, 1936, undocumented vessel, issued to the "Isola Stella" was given

in evidence, showing Green as owner, "whose present address is 46 Star Island, Miami Beach, Florida," and that it was built in Miami Beach, Fogal Boat Works, in 1928 (8369-70); also No. 113, a photostat copy of certificate of award of number issued to Green, address, 46 Star Island, Miami Beach, Florida, for unnamed vessel (8373).

LINCOLN BROWN, JR., of Miami Beach, Florida, testified that he was an electrical inspector for Miami and formerly an electrical contractor; that he did much maintenance work for Green at his Star Island residence and the installation for a large party there; that he had not seen anything in this area before or since to compare with it; they had about 18,000 lamps, which was rather unusual, a majority of parties run anywhere from 2,000 to 3,000 lamps; not only decorated the trees and shrubs but also the driveway and main entrance, flood-lighted the Royal palms and the annual gardens between the palms with garland lights to blend with the flowers themselves, which made a very pretty show, and also lighted the area around the dock and the front side of the house facing the Bay; Green issued the orders for that job, watched the work and took much interest in it (8378-80); witness first interviewed Mrs. Green and after receiving her instructions, Green said, "I do not believe that is enough; I want to make a show that will be outstanding here; you can really go ahead and do your best; we have had pretty jobs around the beach and I have heard a lot of talk about them and I want them to talk about this one; this will be an outstanding party" (8380); there was no limit placed on the expense of the decoration for the party; witness also did the wiring for the east wing of the house and has recently inspected the plans showing the locations; the outlets could be termed right up to the minute at the present day; it has become customary to place outlets between every opening to prepare for a change of furniture in large rooms; at the time it was done, it was the best method of installation known (8381-3); base receptacles or convenience outlets are liberally supplied throughout the house (8383); they were all made available for use when needed; in doing the work the Colonel was anxious to have everything done in the best manner possible without regard to price (8385); had about 70 men employed for a week on the party job;

there was a second illumination the day of the visit from the President of Cuba (8385); this party job cost about $6800; that on returning from a trip, he had a conversation with Green in which the latter spoke of the lack of appreciation of the people of the advantages of living in Miami and referred to them as crackers and when witness objected, Green said, "You don't want to feel bad about being called a cracker, we crackers have to stick together" (8388); his favorite expression was to refer to it as "God's Country;" the only thing that bothered him were the mosquitoes in the late Spring and early Summer; he never mentioned Texas and said he would stop off in New York on business on his way to Round Hills, Massachusetts; told him he had been doing some electrical experimenting up there (8389).

On cross-examination by counsel for New York, witness stated there are plenty of outlets in the palm room, two in the ceiling and the rest located on the side; they are either the wall bracket type or in a base location within eighteen inches of the floor (8391).

Edgar Louis Keuling, of Miami, Florida, testified that he was a florist and met Green when he bought the Yacht Club and in connection with the motor boat races in which he was interested; witness was Commodore of the Club at one time; these races were on a national and later international scale; boatmen would come from Italy, France and other Countries; they were held in front of the Flamingo Hotel in the Bay, between Star Island and Miami Beach Island, were fostered by the Miami Beach Yacht Club composed of local people; in the early days, Green contributed to the financial support of the general program and later in putting out a trophy for outboard motors, a very fine trophy called the Star Island Trophy—they called it the Colonel Green Trophy; the development of outboard motors was due to the magnificent trophy he gave (8394-5); the large trophy was kept by the winner for one year, his name inscribed upon it and when it was returned, he kept a replica of it.

Witness identified Fla. Ex. No. 114 as a photograph of the trophy and the same was given in evidence (8396-7).

He further testified that Green was very much interested in the races and in the larger boats which came from Europe

to compete in the international races; primarily he was interested in the outboards and wanted to see them develop; witness also furnished flowers for his house on several occasions; Green joined nearly everything of a civic nature and subscribed to various organizations; they always counted on him to be at the top of the list to promote something of a civic nature; Green called Star Island "home" (8400-1); on one occasion when he took some flowers over to him when he was leaving, Green said, "This will be a short vacation; this is God's Country; I want to get back here quick;" which was a sort of slogan of his (8402-3).

JOSEPH A. RICHTER, of Miami, Florida, testified that he was in the jewelry and loan business, handling diamonds, etc., for individuals and jewelers who had gone out of business—distress goods; that he was in business for five years in Washington, D. C., at 7th and G Streets (8411); met Green at his Star Island home in 1928 and sold him several pieces of jewelry for about $40,000; later, in May or June of that year, tried to see him at the Waldorf in New York City but he was not feeling well; that Fall, witness went to New Bedford and Green showed him about the airport, his roads, etc., and told him how he established there—that his father and grandfather came there on whalers and how they made their money and bought land for a song; he said he kept the place merely in remembrance of his ancestors; witness asked him how the climate compared with Miami and he said, "Right now it is kind of cool and chilly (he had his overcoat on); Miami is the land of sunshine; there is no comparison, February and March in Miami I can go out and feel like God's Country and down here I have to shiver like an old man, feel cold and don't feel right" (8414-15); witness asked him if he didn't like New York in comparison and he said, "No, I don't like it because its big buildings throw the heat and I don't feel right in New York;" he drove witness around and showed him some of the factories he was interested in—a knitting factory; witness showed him some pieces of jewelry and he said something about having lost some money in stocks and did not believe he was interested then "but will see you when I get home to Miami next Fall" (8414-16); witness asked him when he expected to be there and he said some time before Christmas; witness called on

him before Christmas and he was having some work done and said, "How can I spend more money when I am having all this work done around here: I have to make improvements, and do not believe I want to spend any more money"; the next day his chauffeur stopped in front of witness' store and witness got in the car with Green and sold him about $100,000 worth of jewelry and the following week some more merchandise (8416); that was in 1929 and in the latter part of that year he met him on the Venetian Causeway one Sunday afternoon and Green said he was just viewing his home over there and remarked how beautiful the waters were and pointed out the show boat and said, "Is not this beautiful"; he said, "I have some valuable oil paintings, and I do not know of any artist that could paint this picturesque place of my home here" (8418); witness said he did not sell Green anything after 1929 (8424).

Fla. Ex. No. 115, a letter from Green, dated Lake Placid Club, November 30, 1932, to W. K. Potter, asking for the amount and date of any checks around March 11, 1929, issued to the Richter Jewelry Company while in Florida, and Potter's reply to Green, December 1, 1932, Fla. Ex. No. 116, stating that on March 11, 1929, there was a check for $340,000; March 1, 1929, $22,000; February 28, 1929, $27,500; March 1, 1929, $30,000—were given in evidence (8420-21).

Elisha A. King, of Miami Beach, Florida, testified that he was pastor of the Community Church in Miami Beach, a Church open to everybody in the world regardless of denomination, maintained by voluntary subscriptions; knew Green but had no personal relations with him; in 1925, Green subscribed $1,000 with others to pay the debt on the Church; on this occasion, he was living on his house boat before he built his home at Star Island; from 1930 to 1935, inclusive, they received contributions of $250 a year from him (8430-33).

On cross-examination by counsel for New York, he said he did not know what Green's religious affiliation was and never discussed it with him; he never attended his Church.

On cross-examination by counsel for Massachusetts, he testified that in trying to raise a fund of $100,000 they wanted Green as one of their first subscribers and he had several conferences with him before obtaining his subscrip-

tion; he had always been interested in children and young people and witness showed him photographs of groups of the children about the Church which interested him.

Fleming G. Railey, of Miami, Florida, testified that he was a hardware merchant, had been County Commissioner for two years and active in civic and political matters (8438); that he became acquainted with Green in 1928; Green would drive by his store and they would bring out various articles to him, particularly jigsaw puzzles, in which he was much interested, and the machinery for making them; he had a shop of some kind and wanted every new item that came out; he called often and would park his car sometimes for an hour while looking over their merchandise; his purchases were not confined to wood-working machinery; witness learned to know him fairly well in a business way; would see him in the Fall when he returned from his Summer vacation and asked him if he enjoyed the Summer and was glad to get back and Green always said, "I always feel good here and am glad to get back home"; that from witness' knowledge of the records of the Chamber of Commerce, Y. M. C. A. and Community Chest, of which he was a member of the Executive Committee for a number of years, he knew that Green gave to various institutions and organizations. On cross-examination by counsel for Texas, he testified that there are many people at Miami who stay from January to May and go away on an eight months' vacation, including many who register and qualify to vote; witness does not know that Green did register or vote there; 90% of the people who go away say they are glad to get back to God's Country but he cannot recall hearing Green say so (8445).

On cross-examination by counsel for Massachusetts, witness stated that he never heard a native of New England refer to that as God's Country after he had spent any time in Miami; he cannot recall that he ever heard Green say that he was going away on a Summer vacation (8446).

John Klein, of Miami, Florida, testified that he was Deputy Collector of Customs at Miami, having custody of the registration of boats, and produced his record for the

boat "Friday," signed and sworn to March 2, 1932, by E. H. R. Green, "of Miami Beach, County of Dade, State of Florida," as sole owner (8451-2).

HENRY E. MANGELS, of Miami Beach, Florida, testified that he was a retail grocer and wine merchant and did business with Green; that as an official of the Community Chest, he called upon Green at his Star Island home in 1927 and obtained a contribution of $1,000; in the course of their conversation, Green said, "I lived in Texas; was sent there by my mother, who owned a railroad there, to see if I could get some additional business; I would go into a town, be waited upon by the citizens and officials to see what they wanted; invariably they wanted a new depot or something of that sort and I would ask them what have you got in the City that will warrant a new depot and they would say, we have fine schools, fine churches, fine people and good citizenship; I would ask them what else have you—have you any gambling houses, any saloons, any sporting houses, and they said, No; I would tell them I will have to think this over, it takes all kinds of people to make a good town;" that they had quite a chat over what Miami would be if we had good gambling houses down here; Green said, "I used to live in Texas; it used to be my home;" that they did not discuss New York or Massachusetts (8457-8).

Thereupon counsel for Florida gave in evidence the following Exhibits:

Fla. Ex. No. 117, photograph showing the insignia on the keystone arch above the main entrance to 46 Star Island, or monogram "GG"; No. 118, a photograph of a portion of the room in which is the framed picture of international prizes awarded Green as a stamp collector; No. 119, photograph of Green's bedroom showing a number of trophies awarded him; No. 120, photograph of the entrance to the elevator showing the monogram "G" on each door; No. 121, a list of the cost of furnishings supplied by Barth & Son; No. 122, bill of lading of the Clyde Steamship Company regarding shipment of furniture from Boston, March 2, 1927, from the Shaw Furniture Company to Green, Star Island; No. 123, partial list of shipment of furniture by Raphael Studios in February, 1927 (8460-77).

S. Grover Morrow, of Miami Shores, Florida, testified that he was an attorney at law and Municipal Judge of Miami Beach from January 1, 1925 to December, 1928, and a member of the Board of School Trustees of the District comprising Miami Beach from 1929 to 1937, being Chairman of the Board for the last two years; that he was a member of the Miami Beach Chamber of Commerce for ten or twelve years and first came in contact with Green in 1928 or 1929 in connection either with Scout work or the Committee of One Hundred; that Green contributed approximately $1,000 a year for several years to the Chamber of Commerce; they always counted on him in making up their budget to the extent of that amount; Green was a charter member of the Miami Beach Rod and Reel Club, which started as a rather exclusive organization limited to residents of Miami Beach, afterwards extended to include Greater Miami and visitors (8481-2); that Green continued his interest in the Boy Scouts organization for several years and made contributions; the Committee of One Hundred was started as a political organization for good Government; Green was a member and contributed $500 on one occasion towards the election of Snedigar and witness attended meetings at the Star Island house, which was a large palatial residence (8483-9).

Lewis Forrester, of Miami, Florida, testified that he was an automobile salesman, formerly connected with the Lincoln dealer in Winter and with the Motor Sales Company in New Bedford in the Summer; that he sold Green seven or eight cars—a Lincoln for Mrs. Green in 1931, which was sold and delivered at Miami Beach, in 1932, a Lincoln car with a custom built body with a special door, for his own use, which was sold at Miami Beach and later delivered at New Bedford, Massachusetts, because he was getting ready to leave Miami; also a number of Fords; sold him another Lincoln for himself in the Fall of 1935 at New Bedford; that during that Fall Green was sickly and witness drove him to the station and he inquired whether witness was coming back to Miami or was going to stay up there and freeze to death, and further said, "I will be glad to get back to my home in Florida; I am going to leave here and am glad to get away" (8490-96); Mrs. Green always had the latest model Lincoln and Green had two or three

cars, usually keeping one or two at Miami Beach; he also had Ford trucks, tractors, etc., which were old; he spent a lot of money keeping them up; witness tried repeatedly to get him to trade them in but he didn't seem to be interested in buying any new equipment for Round Hills (8497).

On cross-examination by counsel for Massachusetts, he testified that the last two Lincolns sold Green were sold in New Bedford (8498); of the five cars sold Green, the only one purchased at Miami Beach and delivered there was in December, 1930 (8500); that the cars had Massachusetts licenses but sometimes Florida (8504).

Counsel for Florida thereupon gave in evidence the following Exhibits:

Fla. Ex. No. 124, letter from Green, February 6, 1925, to H. A. Josselyn, Manager, Credit Department, The Bank of Bay of Biscayne, stating he would like to become a permanent member of the Miami Biltmore Golf Club at Coral Gables; No. 125, a photograph of the "Colonel," as first purchased, and No. 126, after it was converted into a show boat; No. 127, photograph of the show boat as tied up at Green's wharf; No. 128, a certificate of the Deputy Commissioner, United States Employees' Compensation Commission, January 12, 1931, covering the "Mabel G.", in which it appears that Green, of Star Island, Miami Beach, Florida, is the owner and operator; No. 129, a similar certificate for the "Isola Stella"; No. 130, a similar certificate for the "Colonel"; No. 131, letter from Green to the Secretary of the Miami Beach Yacht Club, April 4, 1931, stating that he has ordered six more of the silver miniature outboard motor trophies, and No. 132, bill of Caldwell & Company, Philadelphia, for making the same; No. 133, certificate of payment of tax on the "Isola Stella" for the year ending June 30, 1933, and No. 134, receipt for said payment; No. 135, letter from M. Fogal to Green, Round Hills, November 13, 1934, regarding the boat "Friday" and repairs needed to the dock at Star Island, stating he would have the "Mabel G." and "Isola Stella" at the dock January 1st, as in previous years, and No. 136, letter from Green's secretary to Fogal, November 22, 1934, authorizing the repairs and stating they would be leaving shortly for Miami (8507-8528).

AGNES MOLLIE PURNELL, of Miami Beach, Florida, testified she was associate secretary and treasurer of the Miami Beach Chamber of Commerce and previously stenographer, secretary and bookkeeper in charge of the correspondence and records; she identified and counsel gave in evidence Fla. Ex. No. 137, a letter to Green from the Miami Beach Chamber of Commerce, signed by the Board of Governors, October 11, 1926, regarding the hurricane and damage therefrom and soliciting his aid to the extent of twenty memberships at $25.00 each (8539); No. 138, Green's reply, October 18, 1926, enclosing a check for $1,000 (8542); also Fla. Ex. No. 139, a letter from the Secretary of the Chamber of Commerce, October 21, 1926, to Green thanking him for his contribution, and Fla. Ex. No. 140, a letter from the President of the Chamber of Commerce to Green, October 22, 1926, stating they would like to give his contribution some publicity (8544-47).

The witness further testified that the records of the Chamber of Commerce showed Green was a regular member and in 1927 made a contribution of $975, in addition to his membership fee, and from 1928 on up to his death he was a member and made a contribution of $1,000 a year (8549).

Counsel also gave in evidence his membership card as Fla. Ex. No. 141; No. 142, notification from the Chamber of Commerce to Green that he was entitled to six votes at the annual election January 20, 1927 (containing the notation that no vote was cast because he did not reach Miami until the afternoon of January 20, 1927); No. 143, letter from the Chamber of Commerce, September 9, 1927, to Green regarding an illustrated booklet and asking a contribution; No. 144, Green's response enclosing a check for $300; No. 145, a form letter from the Chamber of Commerce, January 19, 1928, regarding Miami Beach; No. 146, Green's response, January 27, 1928, enclosing check for $1,000; No. 147, letter from Green, February 11, 1928, to the Secretary of the Chamber of Commerce acknowledging receipt of a "City Key" which he said he would have installed on his automobile; No. 148, a letter to Green, January 28, 1935, from the witness as associate secretary of the Chamber of Commerce thanking him for his generous assistance; No. 149, ledger sheet showing Green's payments to the Chamber of Commerce from 1927 to 1928; No. 150, Green's card from the Chamber of Commerce showing payments made annually from 1929 to 1936; No. 151, photograph of

The Bath Club of Miami Beach; No. 152, another photograph of the same Club; No. 153, letter from Green's secretary to W. K. Potter, April 13, 1927, stating, "Colonel Green has joined a very exclusive club on Miami Beach called The Bath Club, which is just being organized and cost $1500 to get in;" No. 154, a letter from Green to the Assistant Secretary of said Bath Club, May 21, 1927, stating he would subscribe for two seasons for a cabana, near the driveway, so that his automobile could get in; No. 155, reply from The Bath Club, May 26, 1927, reporting the reservation of the cabana; No. 156, a letter from Green to The Bath Club accepting the reservation and No. 157, certificate of founder membership in said Bath Club issued to Green (8550-8589). The witness further testified that she came to Miami Beach in November, 1928, when its estimated resident population was around 10,000 and in 1935 it was 13,300 and is now approximately 18,000; that their records show that during the twelve months of 1937 approximately 60% of the hotels remained open and approximately 75% of the apartment houses and 60% of the stores and shops stayed open all the year (8595-7).

Joseph T. Rambler, of Coral Gables, Florida, testified that he was President of the Fogal Dry Dock and Storage Company and connected with the Fogal Boatyard, Inc. of Miami; that Green was interested in and a Director of the Fogal Dry Dock and Storage Company and came around the plant quite often; the Fogal Boatyard built the "Friday" and the "Isola Stella" for him about 1926; the "Isola Stella" was patterned after a Venetian gondola, was constructed so as to go under the bridges in the Indian River and other waters at Miami Beach (8600-3); from his home on Star Island, Green could use this boat and pass under all the bridges there; on her stern was painted "Miami Beach"; the "Friday" was strictly a tugboat to be used in connection with a larger boat in intracoastal navigation to Jacksonville but he never used her for that; she was stored almost continuously from the time she was built and was registered in Miami, her home port (8604); his house boat the "Colonel" was converted into a Mississippi River show boat, which was kept at Star Island in front of his home for a few months in the Winter and up the Miami River dur-

ing the Summer; he also had a cruiser about 60 feet long called the "Mabel G." which he kept at Star Island in the Winter and stored the remainder of the year; the boats were usually taken out in the month of November and returned to storage anywhere from April to June (8604-7).

Counsel for Florida gave in evidence the following Exhibits:

No. 158, letter from Green to the Windham Realization Company, April 13, 1927, stating that he was joining Mr. Fogal's enterprise and had agreed to advance $100,000, at 8% interest and all taxes to be paid,—the profits to be divided between him and Morton Fogal on a 50% basis (8609); No. 159, letter from Morton Fogal to Green, Marlin, Texas, May 6, 1927, reporting progress on the new plant (8612); No. 160, a statement of investments of Green in the Fogal enterprise dated March 5, 1928, total $62,105.45 (8615); No. 161, letter from W. K. Potter to Green, March 22, 1928, inquiring whether any change had been made in this agreement with Fogal (8618); No. 162, Green's reply to Potter March 26, 1928, asking him to await further information, and No. 163, partnership agreement between Green and Morton Fogal, both of Dade County, Florida, April 14, 1927, for the conduct of the business under the name of The Fogal Dry Dock and Storage Company (8625); No. 164, certificate of incorporation of The Fogal Dry Dock and Storage Company, April 2, 1928, signed by Morton Fogal, Colonel Green and Anna W. Fogal, showing Fogal with 499 shares, Green with 500 shares and Mrs. Fogal one share (8635); No. 165, letter from Green's secretary Marshall to the Windham Realization Company, April 19, 1928, stating Green had purchased some additional property in connection with the Fogal Dry Dock and Storage Company and issued his check for $15,000 (8643); Nos. 166 and 167, letter from Potter to Green at Star Island, January 17, 1936, and Green's reply, January 20, 1936, regarding the Fogal mortgage for $16,000 which he authorized to be extended for three years, May 26, 1938 (8646-7).

On cross-examination by counsel for New York, the witness stated that the "Mabel G." was built by the Consolidated Ship Building Company in New York in 1925 (8648).

On cross-examination by counsel for Massachusetts, he said the "Mabel G." came out of storage in November, 1935, for a short period for overhauling, was put back in

the shed two months later and has been there ever since (8649); that she was the only one out of storage in the Winter of 1934-5; the previous year the "Mabel G." was out of storage and the "Isola Stella" was out for a couple of months for reconditioning (8650); in 1930, 1931 and 1932 both boats were out, after that only the "Mabel G." was out; that he saw Green last actively moving around the ship yard in 1934 and in 1935 and 1936 did not see him at all (8651-2).

Irene (Mrs. Lincoln) Brown, of Miami Beach, Florida, wife of Lincoln Brown, electrical contractor, now electrical inspector of Miami Beach, testified that she saw Green while employed in her husband's place of business and talked with him on numerous occasions around 1929 to 1932 (8655-7); he spoke about the climate of Florida and how happy the people seemed to be, about his flowers and garden and the way things grew; he got a big kick out of watching the people from his car and said down in this country it is a continuous show, something going on all the time, betting, horse races, dog races, boat races, and said he could not see why anyone would not be the happiest person in the world in Florida; if he happened to come back from his vacation he would say how happy he was to be back and that after being back in Miami Beach a few weeks he would feel wonderful; witness asked him once if he felt so wonderful why he didn't stop taking the medicine and he said, "I am not able to go around like other people, I cannot digest my food, and therefore I have to take something to help me do it" (8658-9); he referred to himself as a cracker and when he happened to be going away on his vacation, he would say he guessed he was going away but it would be only for a short time and he would be back; when witness asked him why he didn't stay all through the year, he said, "I would if there were not so damn many mosquitoes"; on one occasion when he came back and she was complaining, he said "I cannot see how anyone can kick; when I am here for a couple of weeks I could get out and dance if I had a couple of legs like you" (8660); on another occasion, when he was carrying a handful of diamonds, witness asked him if he was not afraid and he said, "No, we have the finest police force on Miami Beach" (8660-1); she never heard him men-

tion New York or Texas; he spoke about how people came down there from all over the world to enjoy the climate and "us crackers just take it for granted"; he said there was not a day in the whole season that he could not go out riding some part of the day (8661-2); that he was as near Heaven in Miami Beach as he ever expected to be (8662).

Witness identified a statement she made to counsel for Florida and the same was given in evidence as Mass. Ex. No. 463 (8696).

Charlie W. Pierce, of Miami Beach, Florida, testified that he was connected with the Miami Police Department and met Green when he was a traffic officer at the Causeway which Green had to cross on his way to Star Island from Miami Beach; sometimes he would pass from eight to twelve times; on many occasions he would stop to talk and witness has seen him making purchases of jewelry, dress goods, etc. (8672-4); he discussed traffic conditions with him and also his roses and the climate and on several occasions, said that anyone who could afford to live down here and did not was crazy; the only other place he ever heard him mention was New York; he said he shipped the jewelry he bought to New York by trunk; that Green had the right of way over everything except the Post Office and Fire Departments (8679-80).

Charles E. Brooks, of Miami, Florida, testified that he was formerly from Texas and met Green after the 1926 hurricane, when he was Superintendent for the City of Miami in the construction of bulkheads, bridges, etc., and in connection with the disposition of rubbish parked near his property on Star Island (8685); that he had to make a daily inspection of the Island and of the City and saw Green frequently; discussed roses with him because the City of Miami Beach wanted to grow some roses and when he asked him where he got his roses, he told him Tyler, Texas, and gave him the address; his place was kept in perfect condition and it was a show spot of Miami Beach (8687-8); in 1928, he had a conversation with Green about a building under construction and referred to the number

of buildings that he had there and Green got mad and said it was none of witness' business, he was building it for his own home and expected to live there the rest of his life (8689); that they discussed Texas, where witness was born, and he asked Green why he did not reside in Texas any more and he replied, "According to his health, the salt air and warm climate here had prolonged his life so much more than any of the doctors that attended him, and that is the reason he bought that place at Miami Beach"; he said that Miami Beach was the garden spot of the world and had the most efficient City Council and Police Force of any City in the Country (8689-90); he said that he had resided in the Town of Terrell, Texas, but did not say how long (8691).

JOHN E. HERRICK, of Miami, Florida, testified that he was a patrolman in the Police Department of Miami Beach and met Green when detailed for duty at Star Island when Green was giving a party and met him occasionally while traffic officer and conversed with him; when he first saw him on his arrival he would welcome the Colonel, who would reply, "Yes, I am glad to be home"; on another occasion, he said he had been very ill and the long train ride was very fatiguing, he was much pleased to get back to Florida with the sunshine which he knew would cure him and he was in hopes in the near future to be able to remain here the entire year (8715); this latter conversation was in the year 1933-4 or 1934-5; he was always very courteous to the police, treated them as equals and referred to them as his boys, tipping them liberally and at Christmas he had an envelope for each of the officers with a twenty-dollar gold piece in it (8716).

R. V. WATERS, of Miami, Florida, testified that he was President of the Miami Airport Association, engaged in the promotion of aviation, with a membership of about 150, most of whom were local people; Green talked with him frequently and visualized Miami's aviation possibilities from a commercial standpoint, as an international airport, especially between North and South America, and also from a military point of view, and favored aggressive action in the development of these possibilities; he was very much

interested in the possibilities of a Trans-Atlantic route by what was called the safe southern route by way of the Latin Countries, around the African Coast, across the Eastern Coast of Brazil and the West Indian Route (8721-24); he was interested in the lighter-than-air development and urged them to do the work of development; he said the Creator had been good to us by putting us at the strategic cross-roads of international travel, and he gave a trophy to the Greater Miami Airport Association to be raced for each year, the winner to get one of the replicas with his name engraved on it, the master trophy to remain in Miami; it cost around $5,000 (8726-8).

Fla. Ex. No. 168, receipted bill of Caldwell & Company, Philadelphia, September 1, 1931, for a special silver Miami All American Air Races Trophy at $2400 and six special Miniature Trophies at $750, making the total cost $3150, was given in evidence (8729); also Fla. Ex. No. 169, letter to Green from C. H. Reeder, Mayor of Miami, May 25, 1931, suggesting a design to be adopted and thanking him for his generous interest, was given in evidence (8732); also No. 170, letter from Green's secretary to R. V. Waters, Chairman, Air Race Committees, declining to sponsor the night air races in January because of unsettled conditions, was given in evidence (8736).

Counsel for Florida also gave in evidence the following Exhibits:

No. 172, photograph of Green and his dog Stella in his automobile; No. 173, letter from Morris Rubin to Green, December 21, 1935, stating that he had a fine collection of coins to show him; No. 174, letter enclosing subscription to the American Stamp Digest, December 7, 1935, giving his address as 46 Star Island, Miami Beach, Florida; No. 175, letter to Green from Milton Bradley Company, Springfield, Massachusetts, March 30, 1933, offering certain jig saw puzzles, and No. 176, receipted bill of the Milton Bradley Company, March 14, 1933, for $268.13 for jig saw puzzles; No. 177, letter to Mrs. Betty Kern Wright, Miami, enclosing check for $100 for a dog trophy in the name of Stella, and No. 178, acknowledgment from Mrs. Wright on behalf of the local Kennel Club thanking him and enclosing a membership card; No. 179, letter from W. A. Kohlhepp, November 27, 1928, soliciting a subscription for

the election of Louis F. Snedigar as Mayor of Miami, and 180, Green's reply, November 30, 1928, enclosing check for $500 to aid the campaign, and No. 181, acknowledgment thereof; No. 182, telegram from Green to the Seaboard National Bank, New York City, February 16, 1925, directing a transfer to the Bank of Bay of Biscayne, Miami, of $150,000 for his account; No. 183, letter from Green to the Windham Realization Company February 18, 1927, advising that he had bought $50,000 City of Miami Beach bonds, to be sent to the Seaboard Bank and charged to his personal account; No. 184, confirmation of the sale of said bonds; No. 185, letter from Green to W. K. Potter, March 21, 1928, advising him that he had drawn a check to the Bank of Bay of Biscayne for $50,000 for the purpose of buying stock in that Bank, and No. 186, a letter from the Vice President of said Bank, June 21, 1928, regarding the purchase; No. 187, certificate for 100 shares of stock issued to Green by The Miami Beach First National Bank, April 9, 1928; No. 188, letter to Green, April 16, 1928, from the Assistant Vice President of the Bank of Bay of Biscayne acknowledging receipt of Green's check for $50,000, in the matter of John Sewell mortgage; No. 189, memorandum from Green's secretary to him, September 27, 1928, regarding application of the President of the Bank of Bay of Biscayne by long distance telephone for a call loan of $750,000, to be placed to their credit with the Seaboard Bank, and No. 190, letter to the Vice President of the Seaboard Bank, New York City, September 27, 1928, authorizing the loan from the Estate of Hetty H. R. Green; No. 191, letter of appreciation to Green from the President of the Bank of Bay of Biscayne, September 27, 1928, and No. 192, enclosure addressed to the Seaboard National Bank regarding this loan; No. 193, letter from the Vice President of the Bank of Bay of Biscayne, October 27, 1928, stating that the loan had been repaid by crediting to the account of the Estate of Hetty H. R. Green; Nos. 194, 195 and 196, correspondence relating to the proposed purchase by Green of certain property in Miami for $11,875, which was not effected; No. 197, telegram to Green, June 11, 1930, advising him of the closing of the Miami Bank Trust Company and Beach Bank, and No. 198, Green's letter to the Liquidator enclosing check for $25,000 in payment of the assessment on 250 shares of stock owned by the Green Estate, Incorporated, and No. 199, letter from Green, Sep-

tember 2, 1930, to the Liquidator of the Bank of Bay of Biscayne, enclosing check for $4,[illegible] in payment of the assessment on [illegible] shares of stock owned by Green, and No. 200, letter from Green to said Liquidator of the Bank of Bay of Biscayne enclosing a check for $76,300, assessment on 763 shares of stock owned by the Green Estate, Incorporated; No. 201, proof of claim, July 23, 1930, filed by Green for balance due on open account, $46,388.75; No. 202, letter of Green to W. K. Potter, February 15, 1932, stating, "I have been tempted down here to make some wonderful purchases, so probably the only thing to do is for me to sign another note to Green Estate, Incorporated for $100,000", and No. 203, Potter's reply to Green enclosing note to be signed by him for that amount; Nos. 204 and 205, letters referring to a loan of $600 made by Green to E. S. White, Miami, Florida, July 1932; No. 206, letter from Green's secretary to Potter, July 22, 1932, relating to the loan by Green of $16,000 to Morton Fogal, of Miami; Nos. 207 and 208, correspondence between Green and John Sewell, of Miami, January, 1935, regarding the loan to him of $50,000, and No. 209, letter transmitting proxy for meeting of the Fogal Dry Dock and Storage Company, January 9, 1936 (8737 to 8822).

TOM NORTLEET, of Miami, Florida, testified that he was Judge of the Criminal Court of Record there from 1920 to 1929, knew Green and in a conversation with him about 1926 over a business proposition, Green said, "You can get in touch with me at any time because this will be my home from now on"; this occurred on his house boat in Miami; witness was financial backer of Ed Huff, working on radio, and they understood Green was very much interested in radio, but when they saw him he seemed to be more interested in aviation than in radio (8830-1).

S. J. TUCKER, of West Palm Beach, Florida, formerly of Dallas, Texas, testified that when he first met Green he took a ride in his "one-lunger" the first automobile that came to Dallas about 1897; Green was quite a friend of witness' father and they went fishing together; while Green's rail-

road headquarters were at Terrell, he spent most of his time at Dallas; witness had a younger brother Fritz who worked for Green in some of his experimental work (8836); the father of witness was a Judge of the Forty-fourth Judicial District of Texas; witness left Dallas in 1909 for Houston, remained there in the railroad business until 1913, then went to New York engaging in the bond business with Bonbright and Company until he went with the National City Bank; in New York he called upon Green for business reasons and because he had known him in Texas; on one occasion about 1913, in referring to Texas, Green said, "If it were not for my mother's business I would not stay in this place, because up here it is dog eat dog; I would like to go back to Texas where a man is a man, whether he has a dime or not; I hope some day to go back there to live" (8839); in the Spring of 1924, witness had a son who was not expected to live and sent his family to Florida and the boy came back so robust and healthy he closed up everything and in the Fall of 1924 came to live in Florida, engaging in farming and the real estate business; later he was appointed by the Federal Court receiver for a number of concerns and on visits to Miami saw Green's secretary, Walter Marshall, who told him Green wanted to see him; when he came to Miami in the Spring of 1934, he saw Green, who greeted him cordially, asked about his family and how he came to Florida and said, "Up in New York, you told me that you hoped to go back to Texas to live;" witness said, "Yes, I did, but I didn't know Florida then, Colonel, it has given my family such health and I have made money here; I think I will just stay here and reside; but you said up there in New York you hoped to go back and spend your days in Texas;" "Well," he says, "Tucker, I thought so then but now I am down here, I have this comfortable home, I have privacy, I can do as I damn please and this is my home and I expect to live here the rest of my days" (8841-2).

On cross-examination by counsel for Massachusetts, witness said this conversation occurred in the Spring of 1934; Green was on his front porch in his wheelchair about to be lifted into his automobile; he seemed to be very feeble physically; he discussed things they had both known perfectly lucidly but his physical condition seemed to be quite weak (8843).

L. G. Fields, of Miami, Florida, testified that he was local manager of the Graybar Electric Company and was well acquainted with Green, sold him a lot of merchandise for his home on Star Island and had a number of personal visits with him in which they talked about a little of everything; on one occasion they discussed stock rights in the American Telephone & Telegraph Company, in which Green was a large stockholder, and he said he had made enough on his stock rights to offset the loss he had sustained in the sale of the Texas Midland Railroad and incidentally made the statement that when he sold his Railroad Company look, stock and barrel that wound up his affairs in Texas (8847); also in discussing inheritance taxes, Green remarked that he was glad he was a Florida cracker for he didn't have to worry about that; taxes were the thing he didn't like to think or talk about much (8848); he always seemed glad to get back to Florida; on one occasion his dog Sally seemed more frisky than usual and witness remarked that Sally seemed to be glad to be back too and he said, "Yes, she is almost as glad to get back as I am"; after he had had one of his blood transfusions and some one had donated the blood, he made the statement that that fixed him up until he got to Florida, where he would not need a blood transfusion (8849); on another occasion he mentioned that he was a Director in the Chase National Bank and that the Windham Realization Company was his New York office; these conversations with him were frequent and covered a period of years; he told witness on a number of occasions he was always glad to get back and "hated like the devil to leave" (8850).

On cross-examination by counsel for New York, witness testified that he saw Green every year he was in Florida; he was at his place of business two or three times a week; in frequently he talked about his stamp collection and seemed to be interested in it (8851).

On cross-examination by counsel for Massachusetts, witness testified that on one occasion he spoke of the boys of the Massachusetts Institute of Technology being ambitious to smash the atom at his place at Round Hills and also talked about his radio station there which he said cost a lot of money to operate (8852-3).

On cross-examination by counsel for Mrs. Wilks, witness understands he called himself a Florida cracker in the same sense that witness does; in discussing the A. T. & T. stock rights, Green never told witness that the largest amount of

that stock he ever owned was 34 shares; witness believed what the Colonel told him about it (8854-5).

M. L. Watson, of Miami Beach, Florida, testified that he conversed with Green fifteen or twenty times in the course of their acquaintance and in these conversations Green seemed to feel better here than anywhere else, liked the country and referred to it as God's Country; on one evening about sunset, he visited Green at Star Island and stood on the lawn watching some sailing canoes and the Colonel waved his hand and said, "Is not that beautiful; that's God's Country; what more could a man ask than to live and have a home in a place like this"; that conversation was in 1931 or 1932 (8859).

Helen Graber, of Fort Pierce, Florida, testified that she was a graduate nurse for fourteen years and was employed by Green from April, 1934, until he died, at Miami Beach and Round Hills, Massachusetts; that until he left for New Bedford about the 18th of June, 1934, he was feeling quite good and his condition at Round Hills was about the same; he left Round Hills that year about December 18th for 46 Star Island and remained there until about May 10, 1935; witness was with him all the time at Star Island as day nurse; the chauffeur would take him riding and he went out frequently in Miami; they left Miami about May, 1935, for Marlin, Texas, and stayed there about six weeks at Dr. Buie's Clinic; there he hired a car and chauffeur and went out some and witness went with him; from Marlin they went to New Bedford some time in June, 1935, and left there about November 16, 1935, for Miami, remaining there until the last of April, 1936, when they left for Lake Placid, New York; witness remained as his day nurse during all of this period until his death (8862-9); in 1934, at Round Hills they went out to ride infrequently, not as much as in Florida; in 1935 at Round Hills he went out occasionally but not as much as in Miami; in Massachusetts, Green did not seem to enjoy going out riding as much as he did while in Miami; he didn't seem interested in things there and the weather seemed to bother him; witness tried to encourage him to go out and he said the people there bored him so—

bothered him too much (8870-2); in 1935 he had planned to go to Florida about the first of November but Mrs. Green was ill and that delayed his going; before going to Lake Placid in 1936, Green said that he was going against his wishes but if he was able to and had his way, he would go to Arizona instead of Lake Placid (8873).

On cross-examination by counsel for New York witness testified that Green was pretty sick when he left in 1936, gradually getting weaker but was still able to go riding in his car (8873).

On cross-examination by counsel for Texas, witness testified that Miss Ruth Salmon was night nurse; that during all of the period witness was there from April, 1934, he had a nurse in constant attendance (8875); that witness knew Green always claimed Texas as his legal residence and expressed a desire to go back to Texas in the Spring of 1936 to Dr. Roche, but on account of the altitude at Lake Placid, Dr. Roche sent him there (8875-6).

On cross-examination by counsel for Massachusetts, witness testified that in 1936 Green said if he had to go to a high altitude, he preferred to go to Arizona to Lake Placid; that it is probably correct that in 1935 he left New Bedford for Miami and Jacksonville November 24 (8878-9); in 1934, he did not leave New Bedford until December 16 and there was no reason for delaying his departure that year except his own preference (8879); that he was growing progressively worse during the time witness was with him; up to the time he left in 1934, the weather had gotten pretty rigorous and he stayed there notwithstanding the cold; witness does not know why he did not want to go out more at New Bedford except he said it tired him too much; people wanted to see him and he didn't want to be bothered (8881).

On cross-examination by counsel for Mrs. Wilks, witness testified that Green was an invalid and under treatment from the time she knew him in 1934 but would not say he was a very sick man; he was never seriously ill until a few weeks before his death; he continued his general routine and in the two years she was with him he had two serious illnesses but except for these he was in pretty good shape (8883-5); that the servants were always sent ahead to prepare Round Hills or Star Island; that she attended the funeral services at Round Hills and the house was in the

condition in which it was in the previous years when the Colonel occupied it (8886).

On cross-examination by counsel for New York, witness stated that she did not know as a matter of fact why Green remained at Round Hills until some time in December, 1934 (8887). In response to questions by counsel for Texas, witness stated that Green disliked Lake Placid very much (8888).

In answer to question by counsel for Massachuetts, she testified that when she went with Green in 1934 he weighed about 166 pounds and in answer to a question by counsel for New York, she said she could not recall all Green said about Lake Placid except that it was the place where all the T. B.'s go and he did not want to go there (8888-9).

Alfred Hess, of Miami Florida, testified that he was connected with the Equitable Life Insurance Company of New York and had been in business in Miami since 1927 as agent of that Company; in 1931 and 1932, he filed an application for some annuities for Green and obtained from him the information to go into the application; that Green, when feeling good, liked to joke; that he said to him, "How can you write an annuity for me; I am a resident of the State of Texas" and witness replied, "Colonel, the fact that you are a resident of the State of Texas does not exclude the life insurance company from writing you life insurance or annuities; my Company, like most of the big companies, is not licensed to do business in Texas but they have no jurisdiction over a resident of Texas who makes an application or pays for life insurance outside of the State; as a matter of fact, a great many thousands of dollars of business is being placed by residents of Texas outside of the State of Texas because many of the big companies don't operate there" (8893); witness convinced him he could write the application for an annuity and asked for the information regarding residence required for the application—whether he wanted to use the State of Massachusetts, New York or Florida, and said, "Why don't you use Florida" and he said, "I have got a big home over here on Star Island and spend more time in Florida than I do in any other place"; witness wrote 46 Star Island, Miami Beach, Florida, as his residence; the number, as witness recalls, was

given by Colonel Green; he gave that as his home address by Green's direction (8893-5).

On cross-examination by counsel for New York, witness testified that Green could not buy insurance because not physically able to stand an examination and that he did not buy any annuities; he was not examined by a physician but told witness he was not able to stand an examination; witness said it was not necessary to stand a medical examination for the annuities; he gave witness the information for the application but did not sign it himself because it was not necessary for him to sign until he approved and paid for it; under the Equitable Company's procedure, when the application is not signed, it is sent back in duplicate attached to the contract, which is signed by the registrar, and the annuitant, if he buys the annuity, signs the application at the time he pays for it; the registrar's signature is what makes the annuity application final; so many people feel that if they sign an application they are obligating themselves to take the contract—it is a sales trick (8898); that witness saw Green almost every day for six weeks; told him the contract was in and handed it to him for his consideration and he said he would let witness know; he finally said he would not be able to take it and asked him to come by the Island and get the contract from his secretary; that was in 1932 and he said finances were such he decided not to take it; among other things, the stock of his Bank was down and he was buying that; witness first wrote him an annuity in 1931 for $1,000,000, which he paid little attention to; of the last two contracts ordered, one was in excess of $400,000, the idea being to buy it so the type of the annuity would preserve about ninety odd per cent of the purchase price in cash and thereafter increase and provide enough death benefits to buy a life income for a number of young ladies that he had officially or unofficially adopted as his wards, as witness recalls, there were nine wards and there was to be produced an income of $200 a month for each one at his death; that witness ordered an additional contract for $100,000 having in mind that if Green felt he could not go in for the total amount that there would be at least a contract for $100,000 that he could buy and also that one or two of the wards were married and he had been giving consideration to the fact of whether there should be enough cash provided to carry the income to the children of the wards; Green later decided that was not necessary and if they had

children they could take care of them themselves (8898-8902); that in 1931 there was no definite information given him and they did not go into details as they did in 1932; that he asked Green whether he should put in New York, Massachusetts or Florida as the residence because in a number of conversations he used to talk about the Waldorf and Sherry-Netherland and Round Hills and witness knew he lived part of the time in Round Hills and in New York.

Witness identified photostat copy of the application referred to by him as Fla. Ex. No. 210 and the same was given in evidence (8915).

Witness further testified that the statement in the application that he had no place of business was not given by Green but was inserted by witness because he was a retired capitalist (8912-13).

Witness also identified Fla. Ex. No. 211, application filled out by him April 23, 1931, but not signed by Green, which was given in evidence (8922), and further testified that the annuities were issued by the Company on these applications but not accepted by Green and were returned to the Company (8926).

On cross-examination by counsel for Texas, witness stated that Green never saw the originals of these applications (8928).

On redirect examination by counsel for Florida, he testified that Green was serious in his statement that the children had not been provided for and said he was not interested in the investment but wanted to make some separate arrangement for the protection of the children and the reason the contract was ordered for the payment to the estate was because he had not obtained at that time the birth dates and it was his intention to get the proof of age of all of the children later to be attached to the contract as in force and change his beneficiary, making it possible to have the contract payable to them subject to the annuity options for them (8930).

Thereupon counsel for Florida gave in evidence the following Exhibits:

No. 212, letter to Green, February 4, 1925, from H. A. Josselyn, enclosing courtesy card of the Police Department of Miami; No. 213, letter from C. H. Reeder, Mayor of Miami, to Green, January 2, 1931, apologizing for an incident which happened while Green was shopping in Miami and assuring him of the freedom of the City; No. 214,

letter from Green thanking Reeder; No. 215, letter from Chairman of the Board of Trustees of St. Francis Hospital, Miami Beach, to Green, March 2, 1931, thanking him for his generous subscription to the bonds of the Hospital; No. 216, letter from Chairman of the Board of said Hospital to Green, March 19, 1931, acknowledging receipt of his subscription of $5,000 to the Hospital bonds; No. 217, letter to Green from the City Manager of Miami Beach, April 29, 1931, stating that as it is their understanding his Miami Beach home will be closed during the Summer they will give his property special police observation; No. 218, letter from John H. Levi, President of The Miami Ocean View Company, to Green, May 12, 1931, soliciting contribution to the Association of Property Owners of Star Island for employment of night watchmen, etc.; No. 219, extract from the minutes of the Board of Adjustment, September 8, 1931, containing a resolution approving Green's addition to his Star Island residence on appeal from a ruling of the Building Inspector; No. 220, letter to Green from Biscayne Bay Islands Company, February 24, 1932, acknowledging his check for $140 for twelve copies of the book "Along Greater Miami Sun-Sea Ara"; No. 221, letter from Green to the First National Bank of Miami authorizing the release of his check held in escrow for said book; No. 222, letter from Green at South Dartmouth, August 11, 1932, to the City Council of Miami Beach regarding the erection of a proposed new bridge from the County Causeway to Star Island; and No. 223, reply from the City Manager, August 15, 1932, to Green reporting the project had been deferred because of lack of funds and No. 224, Green's letter of August 18, 1932, to the City Manager on the same subject; No. 225, letter to Green from the Mayor of Miami, February 8, 1933, enclosing courtesy card and suggesting that he use on his automobile the star sent to him for his splendid civic work in Miami; No. 226, telegram from the Mayor of Miami Beach to Green, June 26, 1933, reporting a fire in his Star Island home; No. 227, letter from the Mayor of Miami Beach to Green, February 1, 1934, enclosing courtesy card, and No. 228, Green's acknowledgment (8932 to 8972).

C. H. Reeder, of Miami, Florida, testified that he had been City Commissioner and Mayor of Miami and gave Green a

star to put on his automobile entitling him to the parking privileges and police courtesies because of his benefit to the community; that witness had received this star in his official capacity, took it off his own car and gave it to Green; that about that time Green had contributed about $3500 to send the Junior Chamber of Commerce Drum Corps to the National Convention and contributed to the Bugle Corps through the witness and a substantial sum to the Children's Hospital (8972-8).

On cross-examination by counsel for Massachusetts, he said that James Donn, of The Exotic Garden Company, suggested that Green be given the star and that Green would like to have that privilege (8979).

On redirect examination by counsel for Florida, witness said that under existing rules this star could not be given to anyone but an outstanding citizen (8980).

On cross-examination by counsel for Mrs. Wilks, he testified that Green was a nationally known character and interested in their local affairs and the giving to him of the star was a courtesy that would be extended to anyone under similar circumstances; that he talked with Green on numerous occasions about his beautiful home at Star Island and never discussed his legal residence with him; witness considered it his home because he spoke of it on numerous occasions, the beauty of the grounds, the architecture, setting, etc.; witness did not know that he was not taxed as a citizen of Florida (8981-2).

On cross-examination by counsel for Texas, witness testified that Star Island was the only place of residence witness knew anything about and never attempted to keep track of Green's movements.

He further testified in response to a question by counsel for Florida that Star Island was the most beautiful place in the whole area (8983).

Counsel for Florida thereupon gave in evidence the following Exhibits:

No. 229, letter from the Miami Anglers Club, April 4, 1928, to Green informing him of his election to regular membership and enclosing receipted bill for initiation fee and dues, and No. 230, Green's membership card in said Club; No. 230-A, receipt for $1,000 from Green to be used for the purchase of the mortgage on the Club property; No. 231, certificate of membership for 1933 issued to Green in the Artists and Writers, Inc. of Miami Beach; No. 232, life

membership card issued to Green in 1934 in said Artists and Writers Club; No. 233, certificate of sustaining membership issued to Green in the Dade County Council, Boy Scouts of America, State of Florida; No. 234, letter from Green to Carl G. Fisher, of Miami Beach, January 22, 1927, regarding membership in the Cocolobo Cay Club, and No. 235, certificate issued to Green, January 25, 1927, for ten shares of the capital stock of said Club; No. 236, letter from the President of said Club to Green, February 12, 1931, calling for his membership check to pay off the purchase money mortgage of said Club, and No. 237, Green's reply enclosing a check for $4,000; No. 238, letter from the secretary to the President of said Club acknowledging receipt of Green's check and No. 239, temporary certificate issued to Green as the owner of two shares of stock in said Club (8986-9006).

JOHN H. LEVI, of Miami Beach, Florida, testified that he was a resident of Star Island and had lived in Miami Beach for twenty years; that he was the engineer that filled in Miami Beach; it was originally a swamp; that he went into the real estate business and was on the City Council for eighteen years and Mayor; that he knew Green from the time he first became interested in Star Island, which was the first artificial island built; Green asked him what was the best place to live and witness told him Belle Island, because it got the southern breeze all the time; they talked it over on his house boat and also discussed his yachts and boats; after considerable investigation, Green bought three lots from his Company; that when Green first came to Miami he lived on the house boat "Colonel," a large boat built like a Mississippi River steamboat, with lovely staterooms and baths and an elevator; Green asked witness what to join and he advised the Polo and Cocolobo Cay Clubs and Green joined them but he does not think he ever went there; that Green joined practically all of the local affairs and they gave several parties on their house boat which was anchored off his place; Green suggested the formation of a local organization to care for Star Island and had meetings at his house; that he was close with his expenditures but willing to pay for whatever he wanted; he had an orange tree there and when he found the fruit died because citrus fruit does not grow on the beach, he tied a few oranges on the tree and

that is the tree that he said he shipped 2500 crates of oranges off; he liked that sort of thing; his shrubbery was very fine; there was no nicer home on Star Island or on Miami Beach; that Green was a fine man and helped people out and gave a great many blind people radios (9014-9022).

On cross-examination by counsel for New York, witness testified that Star Island got only the north breeze; in Miami, the prevailing winds are south and southeast; in building an all-year-round house you should select a place where you would get the south breeze; witness suggested to Green that if he were going to live there all the year round to buy the south end of Belle Island from a competitor of his, but he eventually bought from witness; on one occasion he said he could not vote for witness at the local election because he voted in Texas (9023-5); witness admitted that in his testimony in the probate proceedings, he had testified that Green said regarding the advantages of Belle Island over Star Island from the standpoint of year round residence, "it is only a Winter place and under those conditions it does not make much difference whether you face north or south; all year round it is preferable to have a southern exposure" (9029). On cross-examination by counsel for Texas, witness said he did not remember testifying that Green said he would only be there in the Winter or that it was only a Winter place but if he so testified Green must have said it (9034-35); that the expressions in the deeds "Colonel E. H. R. Green of the County of Kaufman, State of Texas" appeared in the deeds from his Company as directed by Colonel Green and his attorney (9036); Green told him on two or three occasions when he was running for the Council that he could not help him out because he voted in Texas; Green told witness that each time he ran (9037).

On cross-examination by counsel for Massachusetts, witness admitted receiving Mass. Ex. No. 211, a letter from Green to the witness, dated October 26, 1926 (9038); that Green asked him to advise him at South Dartmouth but whether he referred to it as "home" witness could not say (9041); that Green talked to him about television and radio, not about aviation, and asked him why he didn't come to South Dartmouth and also why he didn't come to the Texas Springs and take some of the baths (9042); that the last two years his physical condition was

worse but mentally it was not worse—his mind was alert (9043).

Counsel for Florida thereupon gave in evidence the following Exhibits:

No. 240, membership card issued to Green in the Dade County Tax Relief Association, showing dues paid for 100 memberships to February 1, 1932; Nos. 241 to 249, correspondence with the Flamingo Polo Club regarding the reservation of space for the seasons 1926-1930; No. 250, membership card issued Green in the Florida Outboard Motor Association for 1932; No. 251, certificate of membership issued to Green in the Florida Peace Officers' Association, January 29, 1932; No. 252, similar card for the year 1933; Nos. 253 and 253-A, similar cards for the year 1934; No. 254, life membership card issued Green in the Greater Miami Athletic Club; No. 255, invitation to membership in the Hialeah Club and notation that check for $110 was sent to the Club; No. 256, membership card issued Green in the Little Theatre, Miami, Florida; No. 257, membership card issued Green in the Miami Beach Rod and Reel Club, and No. 258, letter from the secretary of said Club to Green, May 6, 1935, acknowledging receipt of his check, and No. 259, certificate of member ownership in said Club issued to Green; No. 260, letter to Green, March 24, 1934, from the Palm Beach Yacht Club thanking him for his support to the regatta; No. 261, certificate of honorary life membership in the Southeastern Florida Yacht Club issued to Green; No. 262, voting trust certificate issued Green in the Surf Hotel Corporation for ten shares, and No. 263, letter to Green relative to the loss of said certificate, and No. 264, letter from Green forwarding affidavit and bond covering the lost certificate; No. 265, letter from W. K. Potter to Green's secretary relating to the same and stating check to the order of the Surf Club for $3,000 had been issued; No. 266, letter from Waterways-Highways Association, July 31, 1927, to Green acknowledging check for membership, and No. 267, membership card; No. 268, temporary receipt of the Miami Community Chest to Green for $1,000; No. 269, letter dated November 18, 1927, to Green, South Dartmouth, Massachusetts, from the Shrine Committee, Mahi Temple Miami, Florida, soliciting contribution to the convention; No. 270, Green's reply enclosing check for $1,000, and No. 271, Committee's acknowledgment; Nos. 272, 273, 275 and 291, letters from Green in

1930, 1931 and 1932 enclosing checks for $250 to Rev. Elisha A. King, of The Community Church, Miami Beach; No. 274, letter from Green's secretary to Mrs. B. H. Palmer, Miami, February 4, 1932, enclosing $200 for the Junior League; No. 276, letter to Green, March 24, 1932, from the Chairman of The Ann Booker Benefit Fund Committee and pencil notation thereon showing a contribution of $619; No. 277, statement in connection with her funeral expenses; No. 278, letter of thanks from her mother to Green; No. 279, letter to Green thanking him for paying the funeral expenses; No. 280, letter to Green from the committee of citizens thanking him for his contribution on behalf of Ann Booker; No. 281, letter from Mrs. Bascom H. Palmer, March 6, 1933, to Green making an appeal on behalf the Junior League Children's Home of Miami; No. 282, letter from Green to the City Manager, Miami, May 4, 1933, enclosing a check for $5,000 for the Children's Ward of the Jackson Memorial Hospital; No. 283, letter from Green, May 8, 1933, to George Hussey thanking him and others for remarks made by radio regarding his donation, and No. 284, acknowledgment from Mr. Hussey, inviting Green to be guest of honor at the annual dinner of the Artists and Writers Club; No. 285, letter from Jackson Memorial Hospital, July 31, 1933, stating they are preparing a design for the entrance to the Children's Pavilion with the inscription "Colonel E. H. R. Green Children's Pavilion"; No. 286, photograph of the entrance to the Children's Pavilion showing the inscription; Nos. 287 and 288, photographs of the ward; No. 289, letter from William A. McAllister Post No. 1608, Veterans of Foreign Wars, January 5, 1934, asking a subscription to the annual stamp sale for welfare work and notation thereon of check sent; No. 290, acknowledgment of contribution to order of the Eastern Star, March 11, 1934; No. 292, letter to Green soliciting contribution to Greater Miami Dixie Boosters Club and notation of check sent (9048-9167).

Counsel for Florida also gave in evidence the following Florida Exhibits relating to automobiles owned and registered by Colonel Green, of 46 Star Island, Florida:

Nos. 293 to 297; Nos. 299, 300, 301 to 305, inclusive; Nos. 308, 310 to 312, inclusive; Nos. 314 to 316, inclusive, and Nos. 319 and 320 (9167-9323).

Also the following Florida Exhibits:

No. 298, quit claim deed from Stein and others to Green, "of the County of Dade and State of Florida" (9193); No. 306, bill of sale of transfer, April 30, 1930, from Alfred Frei and wife, and No. 307, deed between the same parties conveying certain land in Dade County, Florida (9236-47); No. 313, deed from Green and wife, of Dade County, Florida, January 20, 1931, to the City of Miami of certain land for the widening of the Miami River (9283); No. 317, copy of mortgage deed from Morton Fogal and wife to Green, of Dade County, May 26, 1932, of certain land in Dade County to secure $16,000 note (9301); No. 318, copy of deed, May 11, 1935, from Green and wife, of Dade County, Florida, to Durrant and wife, of the same place, of certain land in Dade County (9312).

Dr. John Barrett, of Coral Gables, Florida, testified that his first visit to Florida was in 1889, and he became a resident of Coral Gables at the time of his marriage; that formerly he was head of the Pan-American Union in Washington; that he knew Green as a boy; Green's home was in Bellows Falls, Vermont, and witness was born and raised a few miles away at Grafton, Vermont; their parents were close friends (9331-3).

After exhaustively describing his extensive diplomatic career, during which he occasionally saw Green, witness said he came in contact with him more closely in 1927 to 1929 and thereafter in his various conversations with Green from the time he met him casually in Florida until he went away to die, he spoke of this as being his home and of the witness and himself being fellow residents (9331-41); that Green spoke on one occasion after 1933 of what witness had done in Washington and of Carnegie's gift of $1,000,000 and said, "Down here, they do not understand or appreciate these things but if my things work out all right I am going to add a Codicil to my Will and pretty nearly duplicate that sum for you to build in Miami a great Pan-American Building that you will preside over as long as you live and that will be presided over after you have gone by the men you have named" (9342); that was their last conversation; the last time witness saw him he said, "You have a lovely home at Coral Gables and I have a nice home here located in an entirely different way; you have land all around you and

I have the water all around me and we must get together and talk over old Vermont relations;" that they discussed being buried back in their home towns in Vermont under the Green Mountains, he at Bellows Falls, which was the port of Grafton twelve miles away, and the witness at Grafton; they agreed they wanted to be interred in the soil of Vermont from which they sprung (9344-5).

Thereupon counsel for Florida gave in evidence the following Exhibits:

No. 321, letter from Green to his sister, Mrs. Wilks, dated Miami Beach, February 2, 1925, in which he says:

"I have just been advised by Mrs. Lee that you have had a very bad attack of Laryngitis. Since leaving New York, January 2nd, in that terrible snow storm, we have not seen a day down here when the temperature was below 72. The motto down here is: 'It is always June in Miami.' The roses and all the flowers are in bloom. You will remember that in New York your bad brother told you that you would have to quit suffering from the throat trouble in the future" (9367-8).

No. 322, letter from Green to W. P. Allen, Terrell, Texas, February 25, 1928, in which he says:

"I received a copy of the order of the Interstate Commerce Commission concerning the Midland and I note the lease becomes effective on March 1st.

The weather is warming up here now pretty well, which, of course, always loosens my joints considerably. My general health is good and I am out in the open most of the time" (9369-71).

No. 323, letter to Green, Asheville, North Carolina, from H. D. Campbell, Vice President, Chase National Bank, December 3, 1930, enclosing a newspaper clipping of a poem about the weather suggestive of Green's comment to him at New Bedford and reporting on banking conditions here and abroad (9374); No. 324, Green's reply, December 9, 1930, in which he says:

"I think the condition of my health makes me believe it is better for me to lie still in bed than to get up and try to fight the elements. I noted what you said about Grove Park Inn, but I am leaving tonight to get some of the Southern sun-

shine. Any time you see any clearing up of the skies up there I would like to hear about it down in the sunshiny country" (9377).

No. 325, letter from Green, Star Island, Florida, to Dr. Pascal, February 4, 1933, in which he says:

"We have been in Miami two weeks today and, as requested, I beg to report that I have taken a ride each afternoon, returning about 4:30 o'clock. Then I get in from a half to an hour's sleep, after which I go down to supper. After supper I return to my room and play with jig-saw puzzles until about twelve o'clock, which is very entertaining. I have been sleeping from then until nine or ten o'clock next day, when I am pulled to pieces by the Norwegian with a massage. I have taken all the medicine except the digitalis morning, noon and night and have run out of the tonic capsules. My pulse has been about the same, the lowest 72 and highest 94, in the morning. I have not seen very much change. Of course, everybody coming to Florida has that feeling of being acclimated, being tired and wanting to sleep for about two weeks, which I think I am getting over" (9381).

No. 326, letter from Green to Dr. Pascal, March 7, 1933, in which he says:

"In regard to myself: I am still taking your tonic medicine. I go out every day, but return at 4 o'clock and lie down and rest. I work a jigsaw puzzle every night. The only difference I see in myself is that my two shoulders and neck seem to get stiff and pain. I attribute this to sitting in the car with all the windows open. We have had kind of a cold spell down here, which I think accounts for my rheumatic conditions. My pulse in the morning has run about 80 to 90, but after I retire at night it goes down to about 78. I am not taking any digitalis. My blood pressure is 147. My color seems to be about normal and my appetite is good. In fact, I seem to be picking up all around. I am enclosing the 'little nurse's' report" (9384-5).

No. 327, letter from Green to H. D. Campbell, Vice President of The Chase Bank, May 4, 1933, in which he says:

"I am in receipt of your letter of May 1st and assure you that your interest in my welfare is greatly appreciated.

Since I have been in Florida this time there seems to have been a constant improvement in my condition, and while it has been slow, it appears to be sure and, I hope, permanent" (9386).

No. 328, letter from Green to Harry Neyland, New Bedford, March 9, 1933, enclosing a check for $150 for a whale's jaw and authorizing fitting up of the "Morgan," in which he says:

"I regret to hear that you are having such severe weather up there. In comparison, will say that down here it is just about perfect and has been all season" (9387).

No. 329, letter from Green to Maynard, Inc., Miami, Florida, March 28, 1927, about the installation of clocks; No. 330, letter to S. Daenitz, Miami, Florida, May 14, 1928, in which he says:

"I have watched with interest the seventeen Sangamo clocks installed in my Star Island home last November by you as Special Agent for the Sangamo Electric Company" (9389-91).

No. 331, letter from Green to the Art Metal Storm Shutter and Awning Company, Miami, Florida, June 19, 1928, regarding payment of their contracts "covering my home on Star Island" (9393-4); No. 332, letter from Green to Chief of Police Glenn, Miami Beach, Florida, April 22, 1931, stating:

"The night watchman at my Star Island home, Richard Moss, has requested that, if possible, he be furnished with a policeman's badge, etc." (9395).

No. 333, letter from Green to City Manager Renshaw, Miami Beach, April 30, 1931, stating:

"I am in receipt of your letter of April 29, and thank you very much for the interest you are taking in my Star Island home. • • • My permanent address is 111 Broadway, Room 1104, New York City" (9396).

No. 334, letter to Green, Star Island, from M. Van Weintraub, Miami Surgical Company, February 12, 1932, stating:

"I would like very much to have a talk with you at your convenience, and believe that the best place would be at your home" (9399).

No. 335, letter from Green, Sherry-Netherland, June 3, 1932, to Chief of Police Glenn, Miami Beach, in which he says:

"Before leaving our home on Star Island we removed everything of value; we have a caretaker and a watchman who will be on duty every day and night until our return and I do not anticipate any trouble; however, should the occasion arise, you can always communicate with me at Room 1104, 111 Broadway, New York City, which is my permanent address" (9400).

No. 336, letter from Green, Lake Placid, New York, October 30, 1932, to F. Lowry Wall, Miami Beach First National Bank, thanking him for an old coin and stating:

"As you see, I am trying out the Adirondacks this year, but have hardly been here long enough yet to be able to tell what effect it will have on my general health. I am, of course, hoping for beneficial results. Fortunately, the fire in our home at Star Island was confined to the cedar room on the third floor and only slight damage was done" (9402-3).

No. 337, certificate of Deputy Collector and Assessor of Taxes for Dallas County, Texas, October 19, 1937, that he had custody of the tax records and had searched the assessment rolls and all available records of his office relating to the rendition by and the assessment of the personal property of Green from which it appears that he made no rendition of personal property for taxation in said County for

any year beginning with the year 1910 to the year 1936, both inclusive, except as shown by attached schedule reading:

"Schedule Showing Assessment Against and Payment by E. H. R. Green of Personal Property Tax in Dallas County, Texas, for the Following Years:

Year	Assessed Value	Tax Paid	Roll
1910	$2000	Yes	Reg. (Resident)
1911	2000	—	" "
1912	None	—	" "
1913	"	—	Unknown
1914	"	—	"
1915	"	—	Non-Resident
1916	"	—	" "
1917	"	—	" "
1918	"	—	" "
1919	"	—	" "
1920	"	—	No Assessment
1921	"	—	" "
1922	"	—	" "
1923	"	—	" "
1924	"	—	" "
1925	"	—	" "
1926	"	—	" "
1927	"	—	" "
1928	"	—	" "
1929	"	—	" "
1930	"	—	" "
1931	"	—	" "
1932	"	—	" "
1933	"	—	" "
1934	"	—	" "
1935	"	—	" "
1936	"	—	" "

(9408–12)

No. 338, certificate of Ed Cobb, Assessor and Collector of Taxes, Dallas County, Texas, October 19, 1937, having custody of the records, etc., of real and personal property assessments from 1885 to 1936, that he has searched the assessment rolls and all available records relating to the rendition by and the assessment of real and personal property of Green, from which it appears that he made no rendition of real and personal property for taxation in said County for any year beginning with the year 1885 to the year 1936, both inclusive, except as shown by the attached schedule reading:

"Schedule Showing Assessment Against and Payment by E. H. R. Green of Real and Personal Property Tax in Dallas County, Texas, for the Following Years:

Year	Real Property: Parcels	Real Property: Assessed Value	Personal Property Value	Tax Paid	Roll
(1885					
(1905 Inc.	None	None	None	None	None
1906	1	$1800	$2000	Yes	Reg. (Res.)
1907	3	29000	None	"	" "
1908	4	34000	1800	"	" "
1909	2	25625	1800	"	" "
1910	2	25000	2000	"	" "
1911	2	35550	2000	"	" "
1912	2	18500	None	"	" "
1913	1	15000	"	"	Unknown
1914	1	15000	"	"	"
1915	1	15000	"	"	Non-Resident
1916	1	15000	"	"	" "
1917	1	15000	"	"	" "
1918	1	15000	"	"	" "
1919	1	16500	"	"	" "
1920	None	None	"	None	None
1921	"	"	"	"	"
1922	"	"	"	"	"
1923	"	"	"	"	"
1924	"	"	"	"	"
1925	"	"	"	"	"
1926	"	"	"	"	"
1927	"	"	"	"	"
1928	"	"	"	"	"
1929	"	"	"	"	"
1930	"	"	"	"	"
1931	"	"	"	"	"
1932	"	"	"	"	"
1933	"	"	"	"	"
1934	"	"	"	"	"
1935	"	"	"	"	"
1936	"	"	"	"	"

(9412-25.)

No. 339, letter from Charles W. Pierson, February 10, 1931, to Green, Star Island, regarding change of domicile to Florida (same as Mass. Ex. No. 304½, R. 5218); No. 340, letter from W. P. Allen to Green, New York City, November 7, 1911, in which he says:

"I want to thank you for the interest you took in writing to me • • • which comes to show that you are still loyal to your Texas friends. You don't know how much we miss you down here in Texas, we want you to come to see us at least once a year and not forsake us altogether" (9435-6).

No. 341, letter from Dallas Automobile Club to Green, New York, May 26, 1916, inviting him to be guest at luncheon of the Club May 31st; No. 342, receipted bill of the Dallas Club to Green, March 13, 1919, covering payment of dues as a non-resident member from February 1 to December 31,

1910 and January 1, 1911 to December 31, 1911 (9440); No. 343, letter from J. W. Hoke, Marlin, Texas, October 10, 1923, to Green, Terrell, Texas, in which he said:

"The people of Marlin are highly pleased with the idea of your returning to them for another season. It is gratifying to know that you have gotten benefit from the waters here and we truly hope that the treatment will continue to improve your condition and completely recover your health.

"In passing let me suggest that it is probable that you might get the B. C. Clark home place, if Mr. F. B. McKay, your friend, failed to find just what you want. This property was improved by a millionaire banker at a considerable cost when building material and labor were nothing to compare with what they are today. This place is modern and has furnace heat and spacious grounds" (9443-4).

No. 344, Green's reply from South Dartmouth, October 19, 1923, in which he said:

"I am in receipt of your favor of the 10th instant, bringing to my attention the B. C. Clark home in Marlin, and, in reply, I beg to advise that as yet a decision has not been arrived at in regard to my proposed visit to Marlin" (9445).

No. 345, letter from Charles W. Pierson, New York, March 31, 1927, to Green, Star Island, Florida, regarding sale of the Texas Midland Railroad (9447); No. 346, letter from City Commission of Terrell to Green, January 10, 1928, in which it was stated:

"Although it is with keen regret we learn that the Texas Midland Railroad will probably be sold and the ties which have so long bound you to this City thus to some extent impaired, we nevertheless feel constrained at this time to express to you something of the feelings of this body and of the people of Terrell.

You have many warm personal friendships here, dating back to the time when you were a citizen of Terrell and an active factor in movements for the public good; and there are many others who have been drawn to you by your liberal and helpful spirit towards the town. All of these regret profoundly the prospect of any change in these relations" (9452).

No. 347, letter to Green, Star Island, Florida, March 12, 1928, from B. L. Gill, Chairman of the Board of The First National Bank of Terrell, Texas, submitting his resignation as Director of the Texas Midland Railroad, stating:

"I cannot refrain from expressing here what so many have already done I am sure, the very great love and affection as well as the appreciation that the people of this community have for you, for what you have done for us here, and there has never been a word of criticism of your action in disposing of the Texas Midland Railroad, except that it meant perhaps a lessening of your personal interest in the community which we have enjoyed so long" (9456).

No. 348, letter to Green from Edwin J. Kiest, March 12, 1928, submitting his resignation as Director of the Texas Midland Railroad, in which he says:

"My only regret is that I fear you will no longer pay your annual visit to Texas" (9458).

No. 349, letter from F. B. McKay, Terrell, Texas, March 28, 1928, to Green regarding transfer of personnel of the said Railroad Company, stating:

"If you expect to stop over at Marlin this season on your return East, I trust that you will notify me at the SP city office, Adolphus Hotel, Dallas, and let me have the opportunity of again arranging your return transportation" (9460-62).

No. 350, letter from Green to Henry C. Coke, Dallas, Texas, May 15, 1928, in which he says:

"I regret very much that our mutually pleasant connection on the Midland will have to be terminated; however, that does not terminate any other friendship we have acquired during the past years of our association. The only thing is that now we are in better shape to help our friends when they are in need of assistance; and remember, the 'latch string' is always on the outside of the door. All I ask is that the next time you are in New York, just try once more and see if you cannot get to the 'Old Goat'. But anyway, mail will always reach me.

From an official notice I received lately, I don't see that I have been relieved of anything, except being the 'angel'

for the Midland. I get as much title, if not more, since they are putting me on the Board of Directors of the Texas and New Orleans Railroad. As I understand it, my duties will require that I make one annual visit over the entire system, so I may be able to drop in again once a year to see the old gang at Dallas.

I am having some pretty severe treatments now with an Osteopath, who is 'pulling my leg' worse that it was ever pulled on the Midland. He says that in the course of a very little time he expects to have me walking around; *then* look out for me if I ever get down to Dallas" (9464-5).

No. 351, letter to Green, Star Island, from Dr. N. D. Buie, Marlin, Texas, February 27, 1934, stating:

"We sincerely hope you are enjoying your stay in Miami and wish to say that at any time you get tired of Miami, we will be most glad to see you around these parts" (9468).

A. J. CLEARY, of Miami, Florida, testified that he was a real estate agent and interviewed Green at the Sherry-Netherland as a member of the Depositors Committee of the Bank of Bay of Biscayne after the failure with a view to having him take $3,000,000 of worthless paper in that Bank to rehabilitate the cash reserve by putting in that amount, having a Committee of the Dade County Bar Association sue and establish a loss on each piece of paper which would be a deductible loss in his income tax returns; that he told him about the financial difficulties of the people of Miami due to the bank failures, about the old ladies who had lost their burial fund and parents who had lost their children's education money, etc.; that it was a great chance for a man to do something for humanity and that it would not cost him a dime in the end; that Green asked Mr. Aldrich or some one from the Chase Bank to come up and he said if the plan were acceptable to the Treasury Department he thought it would be a wonderful thing to do; Green, after much discussion, tentatively agreed provided I could get the necessary figures and permission from the Treasury Department; when witness returned to Miami and the Committee found that the figures given them by the bank officials showed a $6,000,000 bank account in New York that

was not worth a quarter and we needed $9,000,000 instead of $3,000,000, witness had to write Green a letter which ended the transaction; in 1928 or 1929, as Chairman of the Mayor's Unemployment Fund to raise money to provide work after the hurricane and depression, he visited Green and among other things they had a sewing project to make clothing for underprivileged children and give work to mothers, and as he recalled Green donated $500 for clothing (9470-76).

On cross-examination by counsel for New York, he said he saw Green in his apartment in New York in the month of June, 1930, four or five days after the failure of the Bank.

On redirect examination by counsel for Florida, he testified that while waiting for the gentleman from down town in New York, Green subjected him to a rigid cross-examination about all of Florida and every one in it; he also spoke of New York and his place in Massachusetts; he referred to New York as a stop over place between Florida and "my place in Massachusetts," as he put it; spoke glowingly of Florida; said he had been coming down there a long time and loved it more and more as he went on; that he felt better there and it was God's Country and on his place in Star Island was going to make a lot of improvement and stay there more and more each year (9478).

Harry Neyland, recalled as a witness for Florida, identified Fla. Ex. No. 352, as a letter he received from Green on the stationery of the Lake Placid Club, dated November 4, 1932, in which he said:

"The reason I went away so suddenly was that it was up to me to decide whether I should take another blood transfusion or get up into a high altitude and away from the dampness at Round Hills" (9485).

He also identified a letter from Green to the witness, March 7, 1925, and stated that the first time he saw the letterhead used on this letter was when it was placed under his plate at a dinner with Colonel Green before leaving Massachusetts in 1924, and he received the letter in due course of mail from Star Island. The same was given in

evidence as Fla. Ex. No. 353. Upon the letterhead is printed "The Whaler 'Charles W. Morgan' Enshrined and Round Hills Repository of Maritime Antiquities South Dartmouth, Massachusetts" (9488).

The witness thereupon identified a typewritten document, with pencil insertions and erasures, as a speech which Green delivered at the dedication of the "Charles W. Morgan" and said that after Green finished reading it, it was given to the witness and to the Press and printed and a copy returned to witness; that the words in the speech "at our home" were crossed out by Colonel Green himself. The same was given in evidence as Fla. Ex. No. 354 (9491-3 and 9496).

The witness also identified the New Bedford Sunday Standard, November 9, 1924, with the headline reading, "Round Hills Now Abounds with Spirit of Old Whaling Days," as containing a report of an interview with Green when he first became interested in the "Charles W. Morgan"; that Green discussed this article with witness and expressed his approval of the article. The same was given in evidence as Fla. Ex. No. 355 (9499-9500).

He also identified the first page of the Evening Standard of New Bedford, Wednesday, July 29, 1925, as containing an exact interview as Colonel Green gave it to the reporter on the Evening Standard; that Green discussed it with the witness the day after its publication, showed him the article and said, when he expressed his surprise and pleasure, "Well, I am going to make Round Hills a public park, a public place, and I might as well do it now as any time"; they read the article over together and Green approved it. The same was given in evidence as Fla. Ex. No. 356 (9512-14).

Witness further identified a photograph of an old whale craft shop that stood in New Bedford, which he had bought and which was moved to Round Hills, where it now stands, and stated that the article in the New Bedford Times above was discussed by him with Green, who approved it. The same was given in evidence as Fla. Ex. No. 357 (9521).

He further testified that he purchased this shop for the Round Hills Repository of Maritime Antiquities at the request of Colonel Green for $650 (9527), and also identified an article in the Morning Mercury of New Bedford, Massachusetts, Wednesday, March 30, 1927, headed, "Oil Refinery and Candle House at Round Hills. Harry A. Neyland Gather-

ing Old Machinery for Colonel Green, to Be Placed in Replica of Old Factories of Early Days of Whaling," as a report of the activities of witness in gathering the old refinery, machinery, etc., which he purchased by Colonel Green's direction; after the article was written, witness discussed it with Green, who approved it as setting forth his plan (9528). The same was given in evidence as Fla. Ex. No. 358 (9530).

Witness also identified a piece of newspaper from the New Bedford Times, Tuesday, August 9, 1927, headed, "Building For Oil Refinery Given Society," as an article which he discussed with Green after it was given out to the Press and he approved it (9531). The same was given in evidence as Fla. Ex. No. 359 (9533).

The witness further testified that Green gave him a commission to make a bronze tablet for his mother and also said that he had a portrait of his mother that he was anxious to bring to Star Island; he wanted to have a copy of that made for Round Hills, as he always wanted to have her portrait hanging there, but the original he wanted to take to Miami Beach, his home there; he said he was collecting things for the Hetty Green Memorial for which he intended using the Round Hills house, and he wanted her portrait there as well as the bronze tablet of her (9535).

On cross-examination by counsel for Massachusetts, witness testified that the speech was made by Green at the dedication July 21, 1926 (9536); that he had made no formal claim and engaged no attorney but that he had mentioned to the Administrator of the Estate of Colonel Green that there was certain property of his in their possession which belonged to him (9540).

Counsel for Florida thereupon gave in evidence the following Exhibits:

No. 360, letter from Green to Charles E. Lauriat Co., Boston, Massachusetts, November 17, 1924, in which he said:

"We are preserving the old bark 'Charles W. Morgan,' and, adjacent thereto, we are establishing a museum, but changing a little from a regular museum, it will be a novelty, as we will call it a Whalemen's Exchange, a place where anybody wishing to know anything about any of the old whalers in the United States can ascertain the record of the boat in which they are interested.

We are not interested in sea stories, which are about the adventures of one particular man, but we are interested in

the historical works and records of whaling history, giving dates, names of boats, etc., so that we can have a reference library where the record of any whaler that sailed from America can be looked up.

If you will submit to me a list of such books of this nature as you may have, I will check it with lists in my possession, and see if we cannot again renew our friendly relationship and I become a customer of your firm again" (9545).

No. 361, letter from Ralph Hayes to Green, October 22, 1925, regarding Press accounts of Green's possible plans for making Round Hills into a perpetual memorial (9547); No. 362, telegram to Green, Waldorf-Astoria, New York City, from Harry Neyland, June 8, 1927, inviting Green to extend to the people of Dartmouth a welcome on Dartmouth Day (9549); No. 363, letter from Green, Waldorf-Astoria Hotel, June 28, 1928, to the President of the Southern Pacific Lines, acknowledging notification of his election as a Director of the Texas and New Orleans Railroad Company, which concludes:

"I am now getting ready to leave for my country place at South Dartmouth, Mass., and any time I can be of service to you or the Midland, you can get into communication with me there" (9551).

No. 364, letter from Green to W. P. Allen, Terrell, Texas, July 13, 1931, asking him to advise the Mayor of Terrell they would accept $15,000 payment on the Water Works Bonds of the City of Terrell at any time and stating they would reduce the rate of interest on the deposit of $100,000 to the Green Estate, Incorporated, had with his Bank bearing interest at 4% and concluding:

"As usual, we arrived here on July 1, but so far, the weather has been anything but pleasant—foggy, cold and nasty nearly every day. However, for a change this is a very beautiful day and if it will just continue this way, it will help me considerably" (9554-56).

No. 365, letter from Green to Miss Edith M. White, June 14, 1932, enclosing contribution of $1,000 in the name of Margaret McElroy (9557); No. 366, letter to Green from Lewis Whitney, August 14, 1929, regarding poultry breeding at Round Hills (9558).

Thereupon counsel for Florida gave in evidence the following Statutes of the State of Texas appearing in the compilation entitled "Vernon's Texas Statutes, 1936, Centennial Edition":

Article No. 2958, Subject: Residence;
Article No. 2959, Subject: Liable to poll tax;
Article No. 2960, Subject: Exempt from poll tax;
Article No. 7145, Subject: All property taxed;
Article No. 7146, Subject: Real property;
Article No. 7147, Subject: Personal property;
Article No. 7149, Subject: Definition of terms;
Article No. 7151, Subject: When to be rendered;
Article No. 7152, Subject: How rendered;
Article No. 7153, Subject: Where rendered;
Article No. 7161, Subject: Sworn list;
Article No. 7162, Subject: Requisites; and
Article No. 7189, Subject: When assessments made (9562).

Thereupon counsel for Massachusetts gave in evidence the following Statutes of the State of Texas from Vernon's Texas, 1936, Centennial Edition:

Art. 6278. (6424) (4368)—Officers to keep offices in Texas.

Thereupon counsel for Texas gave in evidence the following Statutes of the State of Texas, in addition to those theretofore offered:

Article 2955: Qualifications for Voting;
Article 2955a: Qualifications for Voting for Bond Issues, Lending Credit, Expending Money, or Assuming Debt;
Article 2955b: Certified List of Taxpayers;
Article 2956: Absentee Voting; and
Article 2973: Proof of Residence (9578).

Thereupon counsel for Massachusetts gave in evidence from the Massachusetts General Acts of 1916, Chapter 269, a part of Section 25—Persons subject to taxes imposed by this Chapter; Returns by certain individuals or fiduciaries (9590-1), and also the following portions of the Constitution and Statutes of the State of Florida:

Articles IX, Section 11, of the Constitution of Florida, adopted at the general election in 1924;

The Compiled General Laws of 1927, the State of Florida, Section 893, dealing with subjects of taxation;

Compiled General Laws of the State of Florida, 1927, Section 896, dealing with personal property; in that section personal property is defined;

Compiled General Laws of the State of Florida, 1927, Section 907, dealing with taxation of stock; shares in banks;

Compiled General Laws of 1927, Section 909, the heading being: Owners of water crafts to list same for assessment;

Compiled General Laws of 1927, Section 917, entitled: Returning property for taxation; failure to make return;

Permanent Supplement to the Compiled General Laws, 1936, Section 1041, Paragraph 2, defining the terms: Intangible personal property, and, taxpayers;

Permanent Supplement to Compiled General Laws, 1936, Section 1041, Paragraph 3, dealing with Division of intangible personal property into classes;

Permanent Supplement to Compiled General Laws of 1927, Supplement of 1936, Section 1041, Paragraph 5, dealing with assessment of property;

Permanent Supplement to Compiled General Laws, of 1927, the Permanent Supplement of 1936, Section 1041, Paragraph 6, entitled: Bases of assessment;

Permanent Supplement, 1936 to the Compiled General Laws of 1927, Section 1041, Paragraph 7, entitled: Returns of property for Taxation;

Article X, Section 7, of the Constitution of Florida, as adopted at the general election of 1934, dealing with the increase of the homestead exemption from $500 to $5,000 for purposes of taxation;

Section 3, Chapter 17060 of the Acts of 1935, as to the construction of the words: resident, residence, and permanent residence;

1936 Permanent Supplement to the Complied General Laws of 1927, Section 897, Paragraph 4, dealing with the definition of the words: resident, residence, permanent residence, and words of like import;

Compiled General Laws of 1927, Section 1281, dealing with the subject of: Application for registration on blank furnished, dealing with motor vehicles;

Compiled General Laws of 1927, Section 1283, headed: Certificate and number of registration, dealing with motor vehicles, and so forth;

Compiled General Laws of 1927, Section 1285, dealing with registration fee on motorcycles; motorcycle side car, passenger vehicle, motor trucks, trailer, semi-trailers, and so forth; and

Permanent Supplement, Section 1285, Subsection 17, dealing with the registration fee on motor vehicles, and so forth (9602-3-4).

Counsel for Massachusetts also gave in evidence the following Statutes, of the State of New York:

Section 351 of the New York Tax Law, passed in 1919, as amended (9623).

The Master also directed the insertion in the Record of the letter from Edward O. Proctor, Assistant Attorney General of the Commonwealth of Massachusetts, dated May 4, 1938, as an offer of the Statutes therein referred to in addition to the laws formally offered at the various hearings (9625).

The Statutes of the various States so given in evidence are set forth in the Record at pages 9561 to 9685.

Evidence for Respondent Wilks

Wilbur K. Potter, recalled as a witness for the Estate of Edward H. R. Green, testified that the Westminster Company was organized in 1911 to take over the affairs of Mrs. Hetty Green, so that if anything happened to her they would be able to handle her affairs and properties in corporate form; within a year or two after 1914, her assets were gradually taken over by this Company; at the time of her death, 40% or 50% of her real estate was held by that Company (7845-6); all of the stock of this Company, except Directors' shares, had been issued to Mrs. Hetty Green and Colonel Green; under her Will, with the exception of certain bequests, her estate was left in trust for ten years and the stock of the Westminster Company was held by her estate in the trust; after her death, the activities of the Westminster Company were gradually decreased and it was finally liquidated at the end of the ten-year period and dissolved in 1928; prior to that time it had been inactive (7847-8); the Windham Realization Company was incor-

porated in 1912 to take care of foreclosures of real estate mortgages; Mrs. Hetty Green owned mortgages and ninety-nine year leases aggregating several millions of dollars and these mortgages were handled by the Realization Company; a large number had been disposed of prior to the ten-year period; the stock of the Realization Company was owned by Mrs. Hetty Green, with the exception of the Directors' qualifying shares, and became one of the assets of her estate; by 1926 or 1927, practically all of the leases and the real estate mortgages had been sold or disposed of, with the exception of a few mortgages in Chicago which were retained as good investment until they were gradually reduced (7849-51); at the time of Green's death in 1936, approximately $750,000 to $1,000,000 in mortgages were still owned by his estate and the Green Estate, Incorporated (7851); at the time of the expiration of the trust in 1927, the Windham Realization Company was not very active; for several years it has not had but one mortgage, in the center of New York City, for about $24,000 and the collection of interest on that has been the sole income of the Windham Company (7852); this Company is still in existence and is kept so that they will have a corporation in case it is necessary to go into litigation for any reason; the Company does not hold annual stockholders meetings and has not had one for several years—eight or ten years (7853); up to the time of its dissolution the Westminster Company held stockholders and directors' meetings (7854); Green did not attend any directors' meetings of the Windham Realization Company between 1927 and the date of his death (7854); Green Estate, Incorporated began doing business January 5, 1927; it was organized to keep the Estate of Hetty Green intact, in corporate form; the ownership of the stock was one-half in Colonel Green and one-half in Mrs. Wilks; immediately after the incorporation of the Company certain assets of Mrs. Hetty Green's Estate were transferred to the Company; these assets consisted of practically everything except Municipal, State and Government non-taxable bonds and cash; there was an annual meeting of the stockholders of this Company and directors' meeting as required—two or three a year (7855); the last meeting attended by Colonel Green was in December, 1932, at the Sherry-Netherland Hotel; no real estate was turned over to the Green Estate, Incorporated; the assets consisted of Industrial and Railroad bonds, stocks and cash; its activity

was to collect interest on bonds, dividends and interest on mortgages; there were quarterly payments of interest to the two parties interested and at the annual meeting a dividend was declared; the annual meetings of the directors were short, taking about fifteen minutes each (7857-8); there was no extended discussions, their only problems were good investments and suitable reinvestments; at the time of the incorporation of Green Estate, Incorporated, the bonds and stock of the Texas Midland Railroad were placed among the assets of that Company and when sold in 1928 the cash derived, approximately $2,025,000, came to that Corporation (7858); Colonel Green was the final arbiter in the determination of all investments—offers were made by brokers and a memorandum was submitted to him by witness wherever he happened to be, and he would either take it or say nothing; if they heard nothing from him they knew he was not interested (7859); in New York, they would have a conference with Green and if he was away they would send him a memorandum; the securities were purchased through the brokers and delivered to the bank against payment and a voucher drawn for Green's signature (7860); Green was not at the office, 111 Broadway, after 1921; in the twenty years between his death and his mother's death, Green spent a little more than his total income for that period in the purchase of jewels, stamps, coins, living expenses, Federal income taxes, etc. (7862); he never paid any State income taxes; at his mother's death, his personal estate was approximately $600,000 and during this twenty-year period the investments were largely made from his own capital maturities from time to time (7863); before Mrs. Hetty Green's death, during the ten-year period and up to Colonel Green's death, large cash balances were maintained at all times in the Seaboard Bank and its successors—the Equitable and Chase of New York City—and certificates of deposits were purchased in certain Trust Companies; after the Hetty Green Trust started, most of the investments were in tax-free Municipals, States, Cities, Counties, Towns and School Districts and the Federal Government bonds (7865); in the last ten years of his life, Colonel Green never asked for an inventory of his assets and so far as witness knows did not have one; he was kept advised monthly of the cash position after they had received the bank statements and they sent him a letter of information of the type of Wilks Ex. No. 3 (7867); the West-

minster Company was incorporated in New Jersey; the Windham Realization Company in New York and the Green Estate, Incorporated in Delaware (7869); no one else was interested in these Companies except Hetty Green's Estate, Colonel Green and Mrs. Wilks individually and they did no business of making investments for any one else except these three parties (7869); no control was exercised by Colonel Green or any member of the Green family in any corporation in which they had investments other than these three Companies; in none of the Companies in which they had a large stock interest as investment was there a controlling interest (7870); Green did not take an active part in business affairs in the last fifteen or twenty years of his life; the main work of the office, 111 Broadway, was looking after the income from all investments of all parties interested in the Hetty Green fortune, keeping the books of receipts and disbursements, primarily for tax purposes—a large proportion of its work was accounting (7871-2).

On cross-examination by counsel for New York, witness testified that by investments he meant stocks, bonds, etc., that would produce an income; money that Green spent for stamps, coins or jewelry they had no control over; from their standpoint, it was a personal expense, the money spent on Star Island and Round Hills would not be considered as spent from his income; the cost of the properties was set up on their books as an investment but the running expenses were personal (7874).

On cross-examination by counsel for Florida, witness said that when he first became acquainted with Green's affairs in 1914, the Colonel was an active business man and this continued until his mother's death and afterwards up to about 1921; then his personal activities in business more or less ceased and he became more interested in other things (7876-7); that he had not built himself a home anywhere in New York City or New York State and was living in rented quarters there and so continued until he died (7878); that he started to build at Round Hills as his business activities began to cease; that the title to that real estate upon which the house at Round Hills was built was in his mother's estate, in which he had a half interest with his sister, and he then extended his energy by acquiring several boats and his place in Florida (7879); the land upon which the Star Island was built was owned by Green exclusively (7880); after acquiring these two places, his business activities ceased (7883).

On redirect examination by counsel for Mrs. Wilks, he testified that prior to 1921 Green spent on an average of not more than four or five hours a week at the office—would come in, spend a half an hour and they would not see him again that day; during this period the assets being managed ran into millions of dollars (7886-7).

After the conclusion of the hearings, at the request of all parties, counsel for Texas, Massachusetts and Florida submitted and the Master directed to be filed affidavits of the witness Wilbur K. Potter, more clearly setting forth the assets within said jurisdictions, respectively, at the time of Colonel Green's death (R. following page 9800).

New York Evidence in Rebuttal

Victor C. Strandell, of Miami, Florida, testified that he was foreman of the Railway Express Agency and knew Green for several years while he had dealings with his office; in 1934, he thinks it was, he had a conversation with Green in front of his office and asked him when he was going back home and Green replied, laughingly, "What do you mean by going back home; I am home" and witness said, "What time of the year are you going back" and he replied, "I am going back home; I am going back when the weather gets too warm; the reason I laughed was because your agent up in Massachusetts asked me the same identical question last year, last Fall; he asked me, Colonel, when are you going home—back home and I told him the same thing I am going to tell you—I told him whenever your weather gets so that I cannot stand it I am going back to my home in Florida" (9687-9).

Texas Evidence in Rebuttal

Thereupon counsel for Texas gave in evidence Tex. Ex. No. 405, a certificate by the Comptroller of Public Accounts of the State of Texas based upon his examination of the records of Dallas and Kaufman Counties with reference to assessments in the name of E. H. R. Green, Mrs. Mabel H. Green and Green Estate, Incorporated for 1936 (9691); also Tex. Ex. No. 406, photostat copy of State and County Tax Receipt for 1931 on real and personal property assessed against E. H. R. Green (9692); also Tex. Ex. No. 407, a similar receipt for 1935 (9696).

Massachusetts Evidence in Rebuttal

EARL YEATON, of Clifton, New Jersey, testified that he was in the sales department of the Shaw Furniture Company, East Cambridge, Massachusetts, with offices in New York City, manufacturers of custom-made furniture; he has examined and brought with him the records of said Company, including pictures of the desk manufactured by his Company January 4, 1926, and delivered to the Express Company August 31st of that year for transportation to Colonel Green at Star Island; that he has recently examined the desk in Colonel Green's chambers and found their tag, V-83, their order number, thereon; that the desk is walnut; that they made all of the furniture for the Round Hills farm and this desk is a copy of the desk made for Round Hills (9700-4) (counsel for Massachusetts stated that the desk described by witness was the one shown in the Star Island home as Colonel Green's mother desk); that the desk was the same except there was an addition to the base to increase its height (9705).

Counsel for Massachusetts gave in evidence Ex. No. 464, the original order for the desk and Ex. No. 465, a photograph thereof (9706-13).

On cross-examination by counsel for Florida, the witness testified that his Company made all of the furniture for the Star Island house; it was as good as money could buy; it was all shipped from the factory at Cambridge, Massachusetts, to Star Island, consigned to Green in 1926 (9714-15.)

On cross-examination by counsel for New York, he testified that he could not say whether the desk was an exact replica of the desk at Round Hills but was based upon it; the furniture was ordered by L. Barth and Company, the decorators.

On redirect examination by counsel for Massachusetts, the witness examined the photograph attached to a letter of F. Lowry Wall, June 29, 1933, and compared the desk there represented with Mass. Ex. No. 465 and said there was nothing in the picture of the damaged desk to identify it as the same article of furniture (9727). Said letter was thereupon given in evidence as Mass. Ex. No. 466 and the photograph as Mass. Ex. No. 465 (9718-19).

HARVEY MANSFIELD, of Miami Beach, Florida, testified that he was Executive Secretary and Treasurer of the Beach Club, Miami Beach; that he had seen Green at but not in the Club several times in his car; that he has examined the photographs, Fla. Exs. Nos. 151 and 152 and that the person in the straw hat in the cabana he could not recognize as Colonel Green (9725-7).

Counsel for Massachusetts then gave in evidence a statement of the Atlantic Coast Line Railroad Company, January 28, 1926, to Green, Waldorf-Astoria, New York, for transportation in special car and the same was given in evidence as Mass. Ex. No. 468 (9730); also as Ex. No. 469, photograph of newspaper article and photographs in connection therewith taken from The Morning Mercury, of New Bedford, Massachusetts, Thursday, July 22, 1926, regarding Green's speech at the dedication of the "Charles W. Morgan" (9734); also as Mass. Ex. No. 470, a photostat copy of article and photographs from The Evening Standard, New Bedford, Massachusetts, Thursday, July 22, 1926, relating to the same occasion (9736).

Counsel for New York thereupon gave in evidence N. Y. Ex. No. 237, a letter from Green's secretary, Star Island, April 1, 1933, addressed to J. N. Lummus, Jr., Tax Assessor of Miami, Florida, in which he says:

"Colonel Green has been further advised that although his legal residence is in another state, the intangible tax on the stock he owns in the First National Bank of Miami and the Miami Beach First National Bank is proper and legal. Therefore, I beg to enclose herewith return covering 100 shares of each of these banks, the value placed thereon being that agreed upon between the respective banks and your office" (9740).

and Lummus' acknowledgment of April 4, 1933, as N. Y. Ex. No. 238 (9741).

Thereupon certain extracts from Texas Ex. No. 6, showing Green's movements in 1896-1898 were copied in the Record at pages 9742-9783.

And thereupon counsel for all parties announced their evidence closed and stated that they did not insist upon any of their exceptions to rulings made by the Master in the course of the various hearings (9784).

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 11, ORIGINAL

THE STATE OF TEXAS, Complainant,
against
THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN, AND HETTY SYLVIA ANN HOWLAND GREEN WILKS, Respondents

INDICES TO DIGEST AND TRANSCRIPT OF REPORT OF PROCEEDINGS BEFORE

JOHN SPALDING FLANNERY, SPECIAL MASTER

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Lawrence William Wells	2	...	...	7	...	6	...	5	...	...	...	...
Thomas E. Corley	8*	...	...	16	...	8	...	8	...	...	...	...
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	17*					15		16				16
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Frank H. Butler	85	...	...	...	...	...	...	...	...	...	...	...
Cary D. Landis	86	...	...	...	...	...	...	...	...	...	...	...
Thomas J. McCann	88	...	...	...	...	...	...	...	...	...	...	...
Harold Winslow	88	...	...	...	...	88	...	...	...	...	...	...
G. LeRoy Bradford	89	...	...	...	...	...	...	...	...	...	...	...
John Newington	90	...	...	...	...	89	...	89	...	...	...	...
Elaine M. Chinn	94	...	...	...	...	90	...	91	...	...	...	...
George Joyce	94	...	...	...	...	...	...	...	...	...	...	...
Joseph Epstein	95	...	...	95	...	...	...	...	...	...	...	...
Luke Smith	96	...	...	95	...	...	...	...	...	...	...	...
F. Lowry Wall	105	...	...	...	...	...	...	...	...	...	...	...
Dr. Charles Frederick Roche	106	...	...	106	...	106	...	105	...	...	...	...
Charlotte E. French	108	...	...	107	...	107	...	108	...	...	...	...
				109	...	109	...	109	...	...	...	...
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* Redirect examination.

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Boothe Colwell Davis, Jr	...	110	110	...	...	...	...	110	...	...	...	...
Ernestina Holcinger	...	112	110	...	...	113	...	113	...	115	...	...
Leon R. Morford	...	116	115*					115				
			115	...	...	116	...	116	...	...	...	...
August Holcinger	...	116	116*									
John O. Green	...	117	116	...	...	117	...	...	...	...	...	...
George E. Ashby	...	118	117	...	...	...	...	118	...	...	...	...
Wilbur K. Potter	...	137	118*									
		142	118	154	...	138	...	118	...	...	...	...
		155				139		149	...	...	...	...
						141		149				
Ernest Temple Love	...	158	157	...	...	155	...	151	...	...	...	...
Lawrence Sturgis	...	...	158*					158				
William C. Cox	...	...	158	...	...	159	...	...	...	...	...	...
Saul Dubov	...	...	159	...	...	...	...	...	...	...	...	...
L. M. De Vausney	...	...	159	...	...	...	...	...	...	...	...	...
Henry Stewart Price	...	161	160	...	...	161	...	161	...	...	...	...
	...	...	161	...	...	163	...	162	...	...	...	...
Dr. Henry S. Pascal			164*									
Charles J. Wallace	...	166	164	...	...	167	...	166	...	167	...	...
Henry F. Woelfle	...	...	168	...	...	...	...	...	...	...	...	...
	...	168	168	...	...	169	...	169	...	...	...	...
William K. Cleverley			169*						...	...	...	...
Louis P. Lengeman	...	170	169	...	...	170	...	170	...	170	...	...
Lawson Purdy	...	...	171	...	...	171	...	...	...	...	...	...
William R. Wiener	...	...	171	...	...	...	...	...	...	...	...	...
James P. Flynn	...	...	171	...	...	...	...	...	...	...	...	...
	...	...	172	...	...	...	...	...	...	...	...	...

Thomas T. Sturgis, Jr.	...	...	172	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Peter John Anton Van der Putten	...	...	172	...	...	174	...	173	...	174	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ralph H. Howes	...	175	174	...	...	176	...	175	...	176	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
			177*																						
Thomas W. Chrystie	...	...	179	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
John W. Schlabitz	...	...	179	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Anne Owens	...	...	180	...	...	181	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
William B. Hogan	...	...	194	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
William C. Phillips	...	...	194	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
William H. Tripp	...	195	194	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Clifton W. Bartlett	...	...	195	...	...	195	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Charles A. Parker	...	...	195	...	...	...	...	196	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
John M. Bullard	...	...	196	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Hubert D. Bliss	...	198	198	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
			199*																						
Harry A. Neyland	...	...	199	...	...	...	...	200	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Edward Ardolino	...	...	200	...	...	201	...	201	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Frederick J. Hartwig	...	...	201	...	...	203	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

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Rezia (Mrs. Bondurant N.) Jarvis	...	203	...	204	203	...	...	204	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Mary Stafford	...	211	...	210	206	...	...	211	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		214		213	214*																				
Walter H. Marshall	...	245	...	251	240	...	...	247	...	253	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		256			254*			256																	
Gerda Augusta Berglund (nee Larsen)	...	262	...	263	257	...	...	264	...	263	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					264*																				
Wilbur K. Potter	...	...	...	...	264	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					296																				
T. W. Chrystie	...	...	...	268	268	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oscar Carlson	...	269	...	...	268	...	...	270	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Eileen Stephenson	...	295	...	296	294	...	...	296	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					296*																				
Raymond McLeod	...	...	...	297	296	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
					298*																				

* Redirect examination.

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Samuel S. Peckham	...	298	...	...	298	...	...	...	...	...	...	...
William M. Emery					298*							
Charles Sumner Ashley	...	301	...	301	298	...	...	301	...	302	...	...
Howard E. Odiorne	...	303	...	303	302	...	...	303	...	...	...	...
Zabina B. Davis	...	304	...	305	303	...	...	305	...	...	...	...
	...	307	...	308	305	...	...	308	...	...	...	...
Yvonne A. Jette								308				
J. Edward Harris	...	309	...	...	308	...	...	...	...	309	...	...
Harry A. Neyland	...	311	...	312	309	...	...	311	...	...	...	...
	...	315	...	317	312	...	...	315	...	317	...	...
Ruth L. Briggs								318				
Harry R. Bennett	...	319	...	...	318	...	...	...	...	...	...	...
Edward L. Bowles	...	320	...	...	319	...	...	320	...	...	...	...
Herbert D. Hill	...	324	...	325	321	...	...	324	...	...	...	...
Frank C. Taylor	...	...	...	...	325	...	...	...	...	...	...	...
John M. Bullard	...	328	...	...	328	...	...	328	...	327	...	...
Nick Natsis	...	329	...	...	329	...	...	...	...	...	...	...
Maurice J. Sullivan	...	...	...	330	330	...	...	330	...	...	...	...
James A. Dixon	...	336	...	336	333	...	...	336	...	...	...	...
Charles W. Keyes	...	...	...	...	336	...	...	337	...	...	...	...
	...	...	...	...	337	...	...	337	...	...	...	...

Henry F. Long	...	339	...	339	...	339	338	...	...	...	...	...
Seth T. Cole	...	...	...	...	...	340	340	...	...	...	...	...
Thomas Tullouch	...	...	...	...	...	341	340	...	...	341	...	...
William C. Vander	...	...	...	...	...	...	341	...	...	...	...	...
John McKie	...	...	...	345	...	345	344	...	...	...	...	...
Charlotte E. French	...	...	...	...	...	...	345	...	...	...	...	...
Frank M. Deigaard	...	...	...	...	...	346	346	...	...	...	...	...
							346*					
William P. Baird	...	...	...	...	...	...	346	...	...	...	...	...
Richard Plummer	...	...	...	...	...	...	347	...	...	...	...	...
Mrs. Charlotte Donn	...	...	...	348	...	348	347	...	...	348	...	...
							348*					
James Donn	...	...	...	...	...	351	348	...	...	...	...	...
							351*					
Marguerite H. Allen	...	...	...	...	...	...	351	...	...	...	...	...
E. G. Sewell	...	352	...	...	...	352	352	...	...	...	...	...
Eugene Franklin Holland	...	...	...	...	...	...	353	...	...	...	...	...
Robert A. Gideon	...	...	...	...	...	...	353	...	...	...	...	...
Miss Jefferson Bell	...	...	...	...	...	...	354	...	...	...	...	...
George Rodearmel	...	...	...	...	...	...	354	...	...	...	...	...
Lincoln Brown, Jr	...	...	...	356	...	...	355	...	...	...	...	...
Edgar Louis Keuling	...	...	...	...	...	...	356	...	...	...	...	...
Joseph A. Richter	...	...	...	...	...	...	357	...	...	...	...	...
Elisha A. King	...	...	...	358	...	358	358	...	...	...	...	...
Fleming G. Railey	...	359	...	...	...	359	359	...	...	...	...	...
John Klein	...	...	...	...	...	...	359	...	...	...	...	...
Henry E. Mangels	...	...	...	...	...	...	360	...	...	...	...	...

* Redirect examination.

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Witness	Texas		New York		Mass.		Florida		Mrs. Wilks		Mrs. Green	
	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
S. Grover Morrow	...	...	...	...	...	...	361	...	...	...	...	...
Lewis Forrester	...	...	...	...	...	362	361	...	...	...	...	...
Agnes Mollie Purnell	...	...	...	...	...	...	363	...	...	...	...	...
Joseph T. Rambler	...	...	...	365	...	365	364	...	...	...	...	...
Irene (Mrs. Lincoln) Brown	...	...	...	...	...	...	366	...	...	...	...	...
Charlie W. Pierce	...	...	...	...	...	...	367	...	...	...	...	...
Charles E. Brooks	...	...	...	...	...	...	367	...	...	...	...	...
John E. Herrick	...	...	...	...	...	...	368	...	...	...	...	...
R. V. Waters	...	...	...	...	...	...	368	...	...	...	...	...
Tom Norfleet	...	...	...	...	...	...	371	...	...	...	...	...
S. J. Tucker	...	...	...	...	...	372	371	...	...	...	...	...
L. G. Fields	...	...	...	373	...	373	373	...	...	373	...	...
M. L. Watson	...	...	...	...	...	...	374	...	...	...	...	...
Helen Graber	...	375	...	375	...	375	374	...	...	375	...	...
Alfred Hess	...	378	...	376 377	...	...	376 378*	...	...	...	...	...
C. H. Reeder	...	380	...	...	...	380	379 380*	...	...	380	...	...
John H. Levi	...	382	...	382	...	382	381	...	...	...	...	...
Dr. John Barrett	...	...	...	...	...	...	385	...	...	...	...	...
A. J. Cleary	...	...	...	395	...	...	394	...	...	...	...	...
Harry Neyland	...	...	...	...	...	397	395*	...	...	...	...	...
							395	...	...	...	...	...
Wilks Witness												
Wilbur K. Potter	...	...	...	404	...	...	...	404	401 405*	...	...	...
New York Witness in Rebuttal												
Victor C. Strandell	...	...	405	...	...	...	...	...	...	...	...	...
Massachusetts Witnesses in Rebuttal												
Earl Yeaton	...	...	...	406	406	...	...	406	...	...	...	...
Harvey Mansfield	...	...	...	...	406* 407	...	...	...	...	...	...	...

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Adair, Garland	1014	....	....	....	....	....	....	....	....	....
Allen, Marguerite H.	....	....	....	....	....	....	8241	....	....	....
Ardolino, Edward	....	....	7797	....	....	7801	8252	7805	....	....
Ashby, George E.	....	3036	7806* 3031	....	....	3037	....	3036	....	....
Ashley, Charles S.	....	6467	3037*	6491	6455	....	....	6482	....	....
Baird, William P.	....	....	....	....	....	....	8101	....	....	....
Barnett, Raymond	995	....	....	....	....	....	....	....	....	....
Barrett, John	....	9349	....	9345	....	9351	9332	....	....	....
				9356		9356				
				9359						
Bartlett, Clifton W.	....	....	4808	....	....	4810	....	....	....	....
Bell, Jefferson	....	8346	....	....	....	8347	8337	....	....	....
Bennett, Harry R.	....	6791	....	6814	6780	....	8351*	6803	....	6823
		6820								
Berglund, Gerda A.	....	5742	....	5766	5664	....	....	5766	....	5769
		5782			5778*			5782		
Bliss, Hubert D.	....	7749	7740	....	....	....	....	7775	....	....
			7779*							

* Redirect examination.

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	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross	Direct	Cross
Bowles, Edward L.	....	6849	....	....	6824	....	....	6853	....	....
Bradford, G. LeRoy	2732	....	....	....	....	2734	....	2735	....	....
Briggs, Ruth L.	....	6771	....	....	6760	....	....	....	....	....
Brooks, Charles R.	....	8691	....	....	....	....	8684	....	....	....
Brown, Mrs. Irene	....	8663	....	8662	....	8665	8654	....	....	....
						8700	8669*			
							8694			
Brown, Lincoln	....	....	....	8389	....	....	8377	....	....	....
Buie, Dr. N. B.	826	....	....	962	....	921	....	889	....	977**
	980*			989				985		
Bullard, John M.	....	7035	4825	7044	6993	....	....	7041	....	....
					7046*					
Butler, Frank H.	2661	....	2649	....	....	2667	....	2649	....	2671
	2669									
	2670									
	2703									
Carlson, Oscar	....	5764	....	5884	5857	....	....	5872	....	5886
		5888		5887				5887		
Chinn, Elaine M.	2788	....	....	....	....	....	....	....	....	....
Chrystie, Thomas W.	2532	....	4406	5855	5853	2553	....	2536	....	....
	2554					2565				
	2567					2568				
Cleary, A. J.	....	9480	....	9476	....	....	9470	....	....	....
				9479			9478*			
Cleverley, William K.	....	4260	4243	....	....	4265	....	4262	....	4266
			4268*							
Cole, Seth T.	2699	....	....	....	....	7088	7085	....	....	....
	2708									
Corley, Thomas E.	240	....	....	371	....	316	....	296	....	400**
	408*			407		411	....	402		
				415				416		

Cox, William C.	....	3658	3650	....	....	....	....	....	....	....
Dallas, John G.	2455	....	....	....	....	....	....	2457	....	....
	2460							2459		
Davis, *Boothe C., Jr.*	....	*2909*	*2901*	....	....	*2910*	....	2909	....	....
Davis, Zabina B.	....	6562	....	6582	6510	....	....	6573	....	6589
Deigaard, Frank N.	....	8100	....	8093	....	8093	8084	6593	....	8097
DeVausney, L. M.	....	3706	3687	8099	....	8099	8099*	....	....	
Dixon, James A.	....	3718	....	....	....	....	....	3716	....	....
Donn, Mrs. Charlotte	....	....	....	7682	7668	....	....	7680	....	....
		8143	....	7684				7683		
		8153		8140	....	8145	8121	....	....	8182
		8185		8150		8150	8149*			
				8173		8152	8151*			
				8184		8174	8152			
							8166			
							8186*			
Donn, James	....	8217	....	8214	....	8219	8190	....	....	....
Dubov, Saul	....	8228		8227		8232	8230*			
		3668	3659	....	....	3668	....	3673	....	....
			3671*					3680		
			3680							
Duke, Llewellyn B.	2697	....	....	....	....	....	....	....	....	....
Edwards, S. G.	1380	....	....	1395	....	1385	....	1384	....	1404**
	1401*			1405		1407				
Emery, William M.	....	6416	....	6437	6379	....	....	6431	....	6447
Epstein, Joseph	2807	....	....	....	....	....	....	2811	....	2821
Fields, L. G.	....	....	....	8850	....	8852	8845	....	....	8853
Flynn, James P.	....	....	4301	....	....	....	....	....	....	....
Forrester, Lewis	....	8500	....	....	....	8497	8491	....	....	....
						8503	8504*			
French, Charlotte E.	7366	8079	....	7408	....	7411	8070	7413	....	7428
	7429*			7428		7423	8082*	7433		8080
				7433		8081				
				8082						

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Galbraith, Harry	1730	....	....	1750	....	1742	....	1739	....	....
Gideon, Robert A.	....	....	....	....	....	1753	8329	....	....	....
Graber, Helen	....	8873	....	8873	....	8877	8862	....	....	8881
Green, John O.	....	3022	3016	8887	....	....	....	3026	....	....
Harris, J. Edward	....	6639	3029*	....	6625	....	....	6643	....	6649
Hartwig, Frederick J.	....	7843	7817	....	....	7834	....	6649	....	....
Herrick, John E.	....	8717	7840*	....	....	7843	....	....	....	....
Hess, Alfred	....	8904	7842*	....	....	....	8713	....	....	....
		8906	....	8895	....	8905	8890	....	....	8928
		8913		8911		8908	8909			
		8928		8919			8929			
Hill, Herbert D.	....	6906	....	....	6886	....	....	6951	....	6952
Hogan, William B.	....	....	4488	....	....	....	....	6952	....	....
Holcinger, August	....	3009	3006	....	....	3012	....	3012	....	....
Holcinger, Ernestina	....	2932	3015*	....	....	2959	....	2939	....	....
			2913	....				2979		
Holland, Eugene Franklin	....	8318	2980*	8318	....	8320	8309	....	....	....
Howes, Ralph H.	....	4367	4488	....	....	8324	8323*	....	....	....
			4356	....		4374	....	4369	....	....
Jarvis, Mrs. B. W.	....	1789	4376*	1796	1782	4377	....	1795	....	....
		1797	4388	....		....	....		....	....

Jette, Yvonne A.	....	6619	....	....	6613	....	....	....	....	6623
Johnson, A. B.	1007	....	....	1014	6624*	....	....	....	....	....
Joyce, George	2794	....	....	2800	....	....	....	....	....	....
Kearns, John	....	....	4315	....	....	....	....	4317	....	....
Keuling, Edgar Louis	....	8403	....	....	....	8406	8392	....	....	....
Keyes, Charles W.	....	....	....	....	7867	....	8407*	7692	....	....
Kiest, Edwin J.	1061	....	....	1268	....	1194	....	1145	....	1299**
King, Elisha A.	1292*	....	....	....	....	8435	8429	....	....	....
Klein, John	....	8452	....	8452	....	8453	8434 8436* 8449	....	....	....
Landis, Cary D.	2705	....	....	....	....	....	....	....	....	....
Larsen, Gerta (see Berglund)	....	....	....	....	....	....	....	....	....	....
Lengeman, Louis P.	....	....	4277	....	....	4280	....	4279	....	....
Levi, John H.	....	9032	....	9023	....	9038	9013	....	....	9046
Long, Henry F.	2627	7076	....	9044 2632	....	2637	7058	2639	....	2631
	2690			2637 2641		2638 7078				2638
Love, Ernest Temple	....	3626	3587	7080	....	3631	....	3629	....	....
Mangels, Henry E.	....	8459	3632*	....	....	....	8455	3633	....	....
Manicoff, Jacob	2642	....	....	2653	....	....	....	....	....	....
Mansfield, Harvey	....	....	....	2656 9728	9725	....	....	9727	....	....
Marshall, Walter H.	....	5423	....	5537	5334	....	....	5454	....	5591
		5636 5641		5651	5606* 5641*			5643		5651
Massengill, F. I., Jr.	1609	....	....	1627	....	1629	....	1625	....	....
McCann, Thomas J.	1628* 2715	....	....	....	....	2719	....	2720	....	....

* Redirect examination.

** This examination in behalf of Mrs. Green.

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McDonald, William Madison	418	....	....	549	....	....	....	503	....	524
	551*			567				567		558
	564*									568**
McKay, F. B.	570	....	....	771	....	713	....	672	....	788**
McKie, John	795*			810				808		
	....	....	....	8061	....	8061	8053	....	....	....
				8066			8066*			
McLeod, Raymond							8067*			
	....	....	....	6370	6342	....	....	6369	....	....
				6371	6371*			6560		
Morford, Leon R.					6559					
	....	2993	2990	....	....	3000	....	2995	....	....
Morrow, Ernest Ford			3003							
Morrow, S. Grover	12	....	....	31	....	21	....	20	....	....
Natsis, Nick	....	8488	....	8487	....	8488	8478	....	....	....
	....	7458	....	7457	7452	....	....	7468	....	7466
Newington, John		7472		7471						
	2738	....	....	....	....	2753	....	2760	....	....
Neyland, Harry A.	....	6685	7782	6733	6651	2769	9482	6689	....	6743
		7792			6749*	7789	9520	6755		
		9513				9535	9527	7790		
		9525						7792		
		9541								
Norfleet, Tom	....	8832	....	8831	....	8833	8829	....	....	....
Odiorne, Howard E.	....	....	....	6508	6495	....	....	6507	....	....
O'Reilly, William M.	....	4816	4385	....	....	4814	....	....	....	....
			4813							
Owens, Anne			4815*							
	....	....	4431	....	....	4442	....	4447	....	....

Parker, Charles A.	....	....	4818	....	....	4823	....	4823	....	....
Pascal, Dr. Henry S.	....	4159	4126	....	....	4167	....	4162	....	4174
Peckham, Samuel S.	....	6375	4179*	6377	6372	4183	....	4182	....	4185
Phillips, William C.	....	....	4796	....	....	....	....	....	....	....
Pierce, Charlie W.	....	....	....	8681	....	....	8672	....	....	....
Plummer, Richard	....	....	....	8115	....	8117	8107	....	....	8681
Potter, Wilbur K.	2480	3363	3041	8120 2512	5804	3364	....	3457	7845	....
	2523	3545	3563*	2606	6333	3556		3556	7884*	
	2600	5845	3581*	2624	7439	3580		3563		
	2608		4269	5807				3573		
	2686		4274	7165				5807		
	7164		4293	7444				7441		
			4297	7872				7885		
								7887		
Price, Henry Stewart	....	3729	3721	....	....	3748	....	3731	....	....
		3789	3783*			3788		3793		
			3793							
			3794*							
Purdy, Lawson	....	....	4283	....	....	....	....	....	....	....
Purnell, Agnes Mollie	....	....	....	8597	....	8598	8534	....	....	....
				8598						
Railey, Fleming G.	....	8444	....	8447	....	8445	8438	....	....	8446
							8448*			8447
Rambler, Joseph T.	....	....	....	8648	....	8648	8600	....	....	....
Reeder, C. H.	....	8982	....	....	....	8979	8973	....	....	8981
							8980*			
							8983*			
Richter, Joseph A.	....	8425	....	....	....	8426	8410	....	....	....
Roche, Dr. Charles Frederick	7315	....	....	7330	....	7349	....	7354	....	....
Rodearmel, George	....	8361	....	....	....	8367	8354	....	....	....

* Redirect examination.

** This examination in behalf of Mrs. Green.

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	1314*									
Schlabitz, John W.	....	....	4423	....	....	....	....	....	....	....
Sewell, E. G.	....	8276	....	8271	....	8293	8256	....	....	8299
Sheppard, George H.	2673	....	....	2675	....	....	....	....	....	2679
Smith, Luke	2881	....	....	....	....	2885	....	....	....	....
	2887*									
Stafford, Mary	....	5009	....	5068	4949	....	....	....	....	....
		5084			5083					
Stephenson, Eileen	....	6321	....	6326	6305	....	....	6324	....	....
					6329					
Strandell, Victor C.	....	....	9686	....	....	....	....	....	....	....
Sturgis, Lawrence	....	....	3635	....	....	3647	....	....	....	....
			3648*						....	....
Sturgis, Thomas T., Jr.	....	....	4308	....	....	....	....	....	....	....
Sullivan, Maurice J.	....	7615	....	7595	7555	....	....	7634	....	7660
				7652						
Tartt, James B.	1411	....	....	....	....	1425	....	....	....	....
Taylor, Frank C.	....	6971	....	....	6959	....	....	6974	....	....
					6983*					
Tripp, William H.	....	4804	4802	....	....	....	....	....	....	....

Tucker, S. J.	....	8843	....	8842	....	8843	8834	....	....	....	
Tulloch, Thomas A. C.	....	....	....	7110	....	7109	7090	....	....	7108	
Twitty, Brice L.	1699	....	....	1710	....	....	....	1708	....	....	
Vander, William C.	....	7147	....	....	....	7138	7111	....	....	7145	
Van der Putten, P. J. A.	....	....	4319	....	....	7147	7146*	....	....	7146	
Wall, F. Lowry	7284	....	4354*	....	....	4335	....	4330	....	4353	
Wallace, Charles J.	7313*	....	....	7308	....	7301	....	7289	....	....	
Waters, R. V.	....	4206	4191	....	....	7312	....	4207	....	....	
Watson, M. L.	....	....	....	....	....	....	8270	....	....	....	
Wells, Lawrence William	....	8861	....	8860	....	....	8856	....	....	....	
	37	....	....	174	....	102	....	83	....	....	
	197*			230		225		213			
	234*										
Wiener, William R.	....	....	4299	....	....	....	....	....	....	....	
Winslow, Harold	2722	....	....	2730	....	....	....	....	....	2727	
	2729*										
Woelfle, Henry F.	....	4218	4209	....	....	4221	....	4231	....	....	
Yeaton, Earl	....	....	4232*	9715	9700	....	....	4235	....	....	
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1935

No. 11, Original

EXCEPTIONS OF THE DEFENDANT THE STATE OF FLORIDA TO THE REPORT OF THE SPECIAL MASTER AND REQUEST FOR AMENDED FINDINGS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS,

vs. *Complainant,*

STATE OF FLORIDA ET AL.,

Defendants.

Statement of the Case.

This is a suit involving a controversy between four sovereign States, the sole issue being whether Edward Howland Robinson Green was at the time of his death on June 8, 1936, domiciled in the State of Texas or the State of Florida or the Commonwealth of Massachusetts or the State of New York, for the purpose of determining which of said States has the exclusive right and jurisdiction to impose and collect the succession, transfer, estate or inheritance taxes imposed by the domiciliary State upon the intangible personal property owned by said Edward Howland Robinson Green at the time of his death.

EXCEPTIONS OF THE DEFENDANT, THE STATE OF FLORIDA, TO THE REPORT OF THE SPECIAL MASTER, AND REQUEST FOR AMENDED FINDINGS.

I.

This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report as follows:

> "He joined clubs, societies and social organizations in every community where he dwelt, but never attended them."

1e

because the said statement and finding standing alone does not inform the Court of the decline of Green's interest in clubs, societies, and social organizations in Massachusetts and his continued interest in such clubs, societies, and social organizations in Florida until his death.

II.

This defendant excepts to the finding of the Master, stated on page 20 of the report, that in Massachusetts and Florida, Green took an active interest in yachting and boating, owned a number of boats, and gave trophies for water sports, because the said statement and finding does not inform the Court of the decline of Green's interest in yachting and boating and the giving of trophies for water sports in Massachusetts, and his continued interest in yachting and boating and giving of trophies for water sports in Florida.

III.

This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report, as follows:

> "He cared nothing for society and never went to social functions,"

because the Master failed to find that in Florida, Green manifested an interest in social functions given by himself and wife.

IV.

This defendant excepts to the finding stated on page 20 of the Master's Report as follows:

> "He had no religious affiliations, but contributed substantial sums to charitable organizations wherever he happened to be,"

because the said finding does not inform the Court of the decline of Green's interest in and contributions to chari

table organizations in Massachusetts, and his continued interest in and contributions to religious and charitable organizations in Florida.

V.

This defendant excepts to the finding stated in the second paragraph on page 27 of the Master's Report as follows:

> "With few exceptions, insubstantially all deeds, papers, and legal documents, he described himself as of Terrell, Texas,"

because the Master failed to find that in a substantial number of deeds, papers, and legal documents made and executed both by and to Green during his last few years in Florida, he described himself and was described as of 46 Star Island, Miami Beach, Dade County, Florida.

VI.

This defendant excepts to the finding stated in the second full paragraph on page 27 of the Master's Report as follows:

> "And the registration of his yacht and numerous boats showing Galveston, Texas as the home port,"

because the Master failed to find that the boats acquired by Green in his later years were registered in Florida with the home port shown there.

VII.

This defendant excepts to the finding of the Master stated on page 35 of the Master's Report wherein he found that on Green's first visit to Round Hills in August, 1917, he determined to build there a monumental home, because such finding is contrary to the evidence.

VIII.

This defendant excepts to the finding stated in the last paragraph on page 35 of the Master's Report, as follows:

> "From 1918 to 1921 the development of this property was his principal occupation ° ° °."

because: (a) such finding is contrary to the evidence; (b) the Master failed to find that from 1918 to 1921 Green's principal occupation was the management of the great estate left by his mother Hetty Green, of which he was the sole trustee.

IX.

This defendant excepts to the finding stated in the second paragraph on page 36 of the Master's Report, as follows:

> "But with this exception retained the whole estate of about 270 acres up to the time of his death,"

because the Master failed to find that Mrs. Wilks and Green jointly owned and retained about 130 acres of the Round Hills property together with the improvements thereon including the Round Hills House.

X.

This defendant excepts to the finding stated on page 42 of the Master's Report as follows:

> "His remains were brought there from Lake Placid for the funeral service, and Mrs. Green continued to occupy Round Hills for six months after his death."

because: (a) it has no evidentiary value in determining the issue involved here; (b) there was no evidence that Green requested that his remains be brought to Round Hills for funeral services.

XI.

This defendant excepts to the findings stated on page 42 of the Master's Report, as follows:

> "Between 1917 and 1936, Green expended on the Round Hills Estate on both capital account and maintenance $6,688,639.55 (D. 268),"

because the Master failed to further find and inform the Court that the said amount included large sums of money spent on radio, aviation, Whaling Enshrined, and other activities not connected with Round Hills as a place of residence.

XII.

This defendant excepts to the finding stated on page 42 of the Master's Report, as follows:

> "He * * * never openly acknowledged Round Hills as his legal residence,"

because the Master failed to find: (a) that Green never in any manner acknowledged Round Hills to be his legal residence; (b) that in every instance where the subject was discussed, Green invariably acknowledged that Round Hills was not his legal residence.

XIII.

This defendant excepts to the finding stated on page 43 of the Master's Report, as follows:

> "He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived,"

because the Master failed to find that as his activities in Massachusetts were curtailed or discontinued and his interest declined, his activities and interests in Florida increased and continued.

XIV.

This defendant excepts to the finding stated in the first paragraph on pages 43 and 44 of the Master's Report, as follows:

> "While there, Green purchased two adjacent lots for $120,000, one of which contained a yacht club which he remodeled into a dwelling for the following season."

because: (a) the Master failed to find that the club house was razed and a dwelling erected on said lot, new in every respect except that the walls of the reception room of the club house were retained and formed the walls of the living room in the dwelling so erected; (b) the Master failed to find that the dwelling erected on said lot was designed and constructed as a home for Green and his family and so used from the time of its occupancy in 1927 until his death.

XV.

This defendant excepts to the finding stated in the first incomplete paragraph on page 44 of the Master's Report as follows:

> "During the succeeding years until his death, Green's average stay in Florida was about four and one-half months between January and May."

because: (a) the Master failed to find the steady increase in time spent by Green in his Star Island home from the time it was first occupied in 1927; (b) the Master failed to find that for the period beginning with 1928 down to June 8, 1936, Green spent more time in Florida than in Massachusetts; (c) the Master failed to find that Green spent his last three Christmases in his Star Island home, Miami Beach, Florida.

XVI.

This defendant excepts to the Master's report because he failed to find or show: (a) the progressive building up of

Green's Star Island home; (b) that in 1927 it was completely remodeled for further comfort and to satisfy Green's requirements; (c) that in 1928 and 1929 further extensive additions and alterations were made; (d) and in 1931 an entire new wing was added at a cost of approximately $85,000, which wing became the living quarters of Green and his wife; (e) that said Star Island home was kept in A-1 condition until Green's death.

XVII.

This defendant excepts to the finding stated in the last sentence of the first incomplete paragraph on page 45 of the Master's Report, as follows:

> "The house contained no library, no framed pictures, or mementoes of his ancestors, or articles of a sentimental nature or personal association as at Round Hills,"

because: (a) the Master failed to find that Green's Star Island home contained a library; (b) that it contained a photograph of his mother; (c) that it contained oil paintings of himself; (d) that it contained articles of a sentimental nature to him.

XVIII.

This defendant excepts to the finding stated on pages 45-46 of the Master's Report, as follows:

> "Green also had several automobiles for himself and Mrs. Green containing Florida and Massachusetts license plates, which were brought from Round Hills to Star Island and sent back at the end of the season,"

because the Master failed to find that some of the automobiles referred to were purchased by Green in Florida and carried from his home at Star Island to Round Hills and back to Star Island upon his return rather than having been

"brought from Round Hills to Star Island and sent back at the end of the season."

XIX.

This defendant excepts to the finding stated on page 47 of the Master's Report, as follows:

> "Everything he did indicated a seasonal vacation and relaxation from physical and mental effort."

because the said statement is contrary to the fact established by the record.

XX

This defendant excepts to the finding stated on page 47 of the Master's Report as follows:

> "Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health."

because the said finding is contrary to the fact established by the evidence.

XXI.

This defendant excepts to the Master's report because he failed to find that Green disposed of practically all of his boats in Massachusetts and later acquired and kept boats in Florida until his death.

XXII.

This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, discontinued giving trophies for water sports in Massachusetts and continued to give trophies for water sports in Florida as long as he lived.

XXIII.

This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, resigned

from and gave up his club memberships in Massachusetts and continued his club memberships in Florida until his death.

XXIV.

This defendant objects to the Master's Report because he failed to find that Green, long prior to his death, ceased to make contributions to community projects in Massachusetts and continued to make contributions to community projects in Florida.

XXV.

This defendant excepts to the Master's report because he failed to find that Green, long prior to his death, gave up and discontinued his photography in Massachusetts.

XXVI.

This defendant excepts to the Master's Report because he failed to find that Green lost his interest in radio in Massachusetts long prior to his death.

XXVII.

This defendant excepts to the Master's Report because he failed to find the gradual decline of Green's interest in the Round Hills Airport.

XXVIII.

This defendant excepts to the Master's report because he failed to find that Green's construction of the Round Hills house was primarily for purposes other than a home.

XXIX.

This defendant excepts to the Master's report because he failed to find that Green had his name removed from a stone placed near the main entrance of the Round Hills house.

XXX.

This defendant excepts to the Master's report because he failed to find that Green's Star Island Home was the only home of which Green was the sole owner at the time of his death.

XXXI.

This defendant excepts to the Master's report because he failed to find that on numerous occasions both in Florida and elsewhere, Green referred to his Star Island Home as "Home".

XXXII.

This defendant excepts to the Master's report because he failed to find that no income tax was assessed against Green by the Commonwealth of Massachusetts.

XXXIII.

This defendant excepts to the Master's report because he failed to find that Green's attorneys advised him that his spending more than six months a year in Massachusetts did not make him liable to Massachusetts for an income tax, and that he did not spend thereafter more than six months in Massachusetts during any one year.

XXXIV.

This defendant excepts to the Master's report because he failed to find that Mrs. Wilks paid one-half the taxes on the Round Hills House except for the first few years after its completion.

XXXV.

This defendant excepts to the Master's report because he failed to find that when Green left Round Hills at the close of the summer seasons, the house was closed, the doors and

windows were protected by storm doors and shutters; the furniture and pictures were covered; the silverware, chinaware, and linen put away; the draperies covered, and the master's kitchen closed.

XXXVI.

This defendant excepts to the Master's report because he failed to find: (a) when Green went to Texas he was sent by his mother to attend to her business; (b) when Green moved from Texas to New York in 1911, he was called back by his mother to attend her business; (c) that when he later went to Massachusetts, it was in response to his mother's request that he there build a monument to her memory.

XXXVII.

This defendant excepts to the finding of the Master stated on page 48 of the Master's report as follows:

> "In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile; and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention—Green did nothing * * ***

because: (a) the proposals to change his legal residence in the particular instances were made for the purpose of avoiding taxes and had no reference to a change of domicile; (b) Green could not have changed his domicile from Texas in 1931 or 1933 for the reason that long prior thereto his domicile had been abandoned and established elsewhere; (c) the said finding is not proper to be considered against Florida in the determination of Green's domicile at the time of his death; (d) the Master failed to find that the incidents

stated in said finding should be given no weight in the determination of Green's domicile.

XXXVIII.

This defendant excepts to the conclusion stated on page 51 of the Master's Report, as follows:

> "His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return."

because: (a) he failed to find that every act of Green's from the time he moved from Texas in 1911 was inconsistent with any intention to return thereto; (b) the residence of Green in New York for a number of years after returning there was as permanent as it had been in Texas.

XXXIX.

This defendant excepts to the conclusion stated on page 53 of the Master's report as follows:

> "To him domicile was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line."

because the said conclusion is argumentative.

XL.

This defendant excepts to the conclusion stated on pages 53 and 54 of the Master's report as follows:

> "He did have some unformulated notion of leaving a memorial to his mother, his sister and himself, and the granite edifice at South Dartmouth on the land that had been in the family for generations surrounded by maritime antiquities in which the Green fortune originated,

with mementoes suggestive of his whaling ancestors, formed to him the most appropriate memorial he could leave after death, and the *most permanent* home he could enjoy while living."

because the same is argumentative.

XLI.

This defendant excepts to the conclusion stated on page 54 of the Master's report, as follows:

"There is no sufficient evidence to show that Green ever intended to make New York his permanent home."

because: (a) it appears that this conclusion is predicated in part on a statement or declaration of Green whereas in other parts of his report, the Master finds that Green's declarations being in conflict with his manner of living, are not sufficient on which to determine domicile; (b) the conclusion is also in part founded upon the fact that Green made no effort to become a voter in New York, and that he owned no real estate there except what he acquired as a result of mortgage foreclosures, and paid no personal or income tax in New York.

XLII.

This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

"In a sworn statement to the tax officials of New York, he declared that he was not and never had been a resident of New York."

because the Master used the said statement made by Green for tax avoidance as a reason for finding that Green never intended to make New York his permanent home while the Master failed to apply like statements made by Green against the claim of Massachusetts as to Green's domicile.

XLIII.

This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

> "This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island Home."

because the Master failed to find that whatever domicile Green had prior to the time he built and occupied the Star Island Home, such domicile was abandoned and his Star Island Home became and was his domicile prior to and at the time of his death on June 8, 1936.

XLIV.

This defendant excepts to the conclusion stated on page 55 of the Master's report wherein he concluded the true criterion to be:

> "The true criterion, therefore, for determining domicile where there are two homes seems to be the order of acquisition, etc."

because the Master obviously failed to apply the further principle of law as follows:

> "Where a man has two homes, and is domiciled in the earlier he may by a mere change of attitude toward his latter home come to have a principal home and therefore a domicile there."

XLV.

This defendant excepts to the conclusion stated on pages 54 and 55 of the Master's report as follows:

> "But under the authorities, the adoption of a changed location or a subsidiary or secondary home for the sake

> of health does not constitute the abandonment of the old and acquisition of a new domicile."

because the Master assumes as a basis for said conclusion that the establishment by Green of his Star Island Home was subsidiary or secondary to his Round Hills place which presumption and conclusion is contrary to the ultimate fact established by a preponderance of the evidence in the case, and further because the Master assumes as a basis for said conclusion that the establishment of the Star Island Home was primarily for the sake of health, and concludes that a change of domicile can not be induced by a consideration of health, which conclusion is contrary to the established principle of law.

XLVI.

This defendant excepts to the statement or finding on page 55 of the Master's report, as follows:

> "* * * never voted there, never paid any intangible or income taxes in Florida, and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas, "

because the Master used the facts that Green never voted nor paid any intangible or income taxes in Florida, and the statement that as late as in 1935 in a judicial proceeding in Florida, he testified that he was a resident of Terrell, Texas, as a basis for concluding that Green was not domiciled in Florida at the time of his death, and did not apply the fact that Green never voted in Massachusetts nor paid any income taxes there as a reason for finding that Green was not domiciled in Massachusetts; and further, because Florida did not have at the time of Green's death, and never had had, an income tax law.

XLVII.

This defendant excepts to the Master's report because he failed to find that Green consistently on all occasions

declared that he was not a resident, inhabitant, or citizen of the Commonwealth of Massachusetts.

XLVIII.

This defendant excepts to the conclusion stated on page 55 of the Master's report that Green did not attempt to make Florida his own country because the same is in conflict with the ultimate fact established by a preponderance of the evidence.

XLIX.

This defendant excepts to the statement contained on page 55 of the Master's Report as follows:

> "Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions."

because: (a) the said statement is not supported by the evidence; (b) the acts of Mrs. Green subsequent to Green's death can not be used to determine Green's domicile at the time of his death.

L.

This defendant excepts to the conclusion stated on page 56 of the Master's report, as follows:

> "Round Hills was not only the earlier home but as the findings of fact show, it was the principal, predominant and permanent home when compared with the Star Island residence,"

because the said conclusion is contrary to the ultimate fact established by a preponderance of the evidence in this case.

LI.

This defendant excepts to the statement or conclusion on page 56 of the Master's report as follows:

"Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out,"

because the circumstance here relied on by the Master is too remote to be entitled to any weight in the determination of Green's domicile.

LII.

This defendant excepts to the statement or conclusion on page 57 of the Master's report as follows:

"Both were homes, but Round Hills was the earlier, predominant, and principal home,"

because said conclusion is contrary to the ultimate fact established by a preponderance of the evidence.

LIII.

This defendant excepts to the ultimate finding and conclusion on page 57 of the Master's Report, as follows:

"Upon a careful consideration of all the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts."

for the following reasons:

(a) The said finding and conclusion is not supported by a preponderance of the evidence in the case.

(b) The preponderance of the evidence under applicable provisions of law support only the conclusion that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, was in the State of Florida.

Therefore, this defendant requests that the said ultimate finding and conclusion be amended, so as to read as follows:

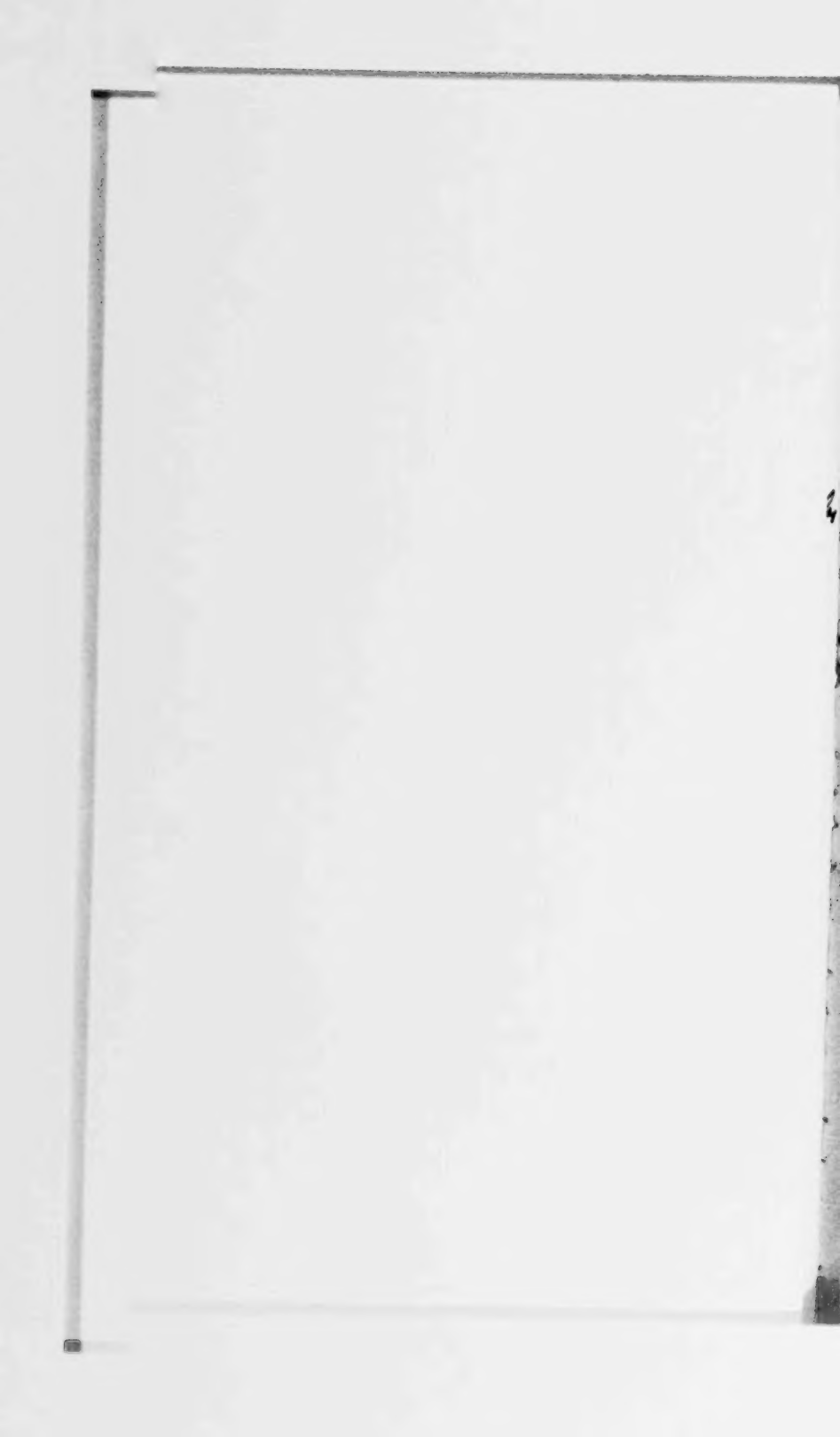
"Upon a careful consideration of all the evidence in the case under applicable provisions of law, it is found that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law was in the State of Florida."

Respectfully submitted,

GEORGE COUPER GIBBS,
Attorney General of Florida;

H. E. CARTER,
Assistant Attorney General;

EDGAR G. HAMILTON,
Special Attorney for the Commissioner of Revenue of the State of Florida,
Solicitors for Defendant, the State of Florida.



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

NO. ~~11~~ ORIGINAL

THE STATE OF TEXAS,
Complainant

vs.

THE STATE OF FLORIDA, ET AL,
Respondents

EXCEPTIONS AND OBJECTIONS TO THE FINDINGS AND REPORT OF THE SPECIAL MASTER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

NO. 11 ORIGINAL

THE STATE OF TEXAS,

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THE STATE OF FLORIDA, ET AL,

Respondents

EXCEPTIONS AND OBJECTIONS TO THE FINDINGS AND REPORT OF THE SPECIAL MASTER

To the Supreme Court of the United States:

Comes now complainant, the State of Texas, and presents its exceptions and objections to the report of the Special Master filed in this Court at the October Term, 1938. The Report is in two volumes, the first containing a statement of the case and the ultimate issue for decision; a statement of the legal principles applied by the Special Master to the facts; findings of fact and the conclusion that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts; together with other appropriate matters not necessary to state.

This portion of the Report concludes with the recommendation for a decree in accordance with the findings of the Special Master; and a recommendation that the Court reserve jurisdiction for certain purposes.

Volume II contains a comprehensive statement of the evidence adduced in behalf of all the parties to the cause. To this digest we interpose no objection. It is thought, in the main, to be a fair summary of the material evidence introduced at the hearings. It should be useful to the members of this Court, in getting a full picture of the factual side of the case.

No objection is made to the form and manner of the Special Master's report; although it is to be observed that the "Findings of Fact" are not wholly ultimate in character and such ultimate findings as are found are mixed with evidentiary matters. In the requested findings we filed with the Special Master, in response to his courteous invitation, we endeavored to make such findings entirely ultimate in character. We think this must be done before the proper legal conclusion or conclusions may be properly drawn. In simple justice, however, we concede the great difficulty confronting the Special Master in this case, in the avoidance of mixing evidentiary matter with ultimate findings. We shall try to indicate in our exceptions and objections the ultimate facts which should be found on the whole record; and to indicate in our brief, to be later filed, the grounds and reasons for our objections to both the findings and conclusions of the Special Master.

We have no objections to the jurisdictional facts found in the Report. On the contrary, in common with all other parties to the suit, we have requested substantially those very findings. The Special Master has well stated the considerations upon which it is thought the Court has jurisdiction to and should adjudicate the domicile of Green at the time of his death, and we adopt his statement and his reasoning. We have no doubt that the cause, under the pleadings and the evidence, presents an actual justiciable controversy of a civil nature between the States, parties hereto, of which this Court has exclusive original jurisdiction.

To the Report certain photographs have been appended. Their verity, of course, is not questioned; but we have felt impelled to except and object to them, in certain particulars. From the Texas' standpoint they have no relevancy whatever; and our objections go to that point and to the further point that they reveal nothing upon the vital and controlling question: Whether either residence depicted was a "home", as distinguished from a mere dwelling place or residence. If neither was Green's home, in the true sense, and he had no home in New York, then it follows ineluctably that his Texas domicile, established long years before, continued and remained his home or "legal residence", as he consistently and persistently termed it.

The photographs reveal the solid grandeur and massiveness of the Round Hills mansion, the exotic charm and beauty of the Star Island house and

grounds; and nothing more. If any pictorial representations at all are to be made to the Court, they should be complete and in no sense misleading or confusing. Our objections may be of doubtful force or value, but we have been led to make them because of the failure of the Special Master to limit the purpose or effect of their inclusion. We may be permitted to add that, throughout the case, we have conceded that either residence was potentially a home.

With the above qualifications and reservations, we present the following exceptions and objections to the matters contained in the report of the Special Master:

I.

Complainant objects and excepts to the finding and statement by the Master on page 20 of his Report in which it is found that "he (Green) had a number of protegees, most of whom were daughters of old Texas friends and acquaintances in Massachusetts", insofar as such statement and finding is to the effect that such protegees or any of them were daughters of acquaintances in Massachusetts; inasmuch as there is no testimony of record showing or establishing that any of the protegees of E. H. R. Green were the daughters of acquaintances in Massachusetts, but to the contrary the evidence is plain and undisputed that none of the protegees of Green were the daughters of any acquaintances of his in the State of Massachusetts, that only one of the nu-

merous protegees of Green was known as a Massachusetts' resident, and the record establishes that such Massachusetts' protegee or ward was not the daughter of any acquaintance of Green. The only Massachusetts' ward was Miss Eileen Stephenson, who, at the time of trial, resided in the City of New York (R. 6306), and the record does not support such finding by the Master but contradicts such finding (R. 6307, 6308, 6309). The witness Stephenson testified that she was known as "the only Massachusetts' ward" (R. 6322-6323).

II.

Complainant objects and excepts to the findings by the Special Master on Page 26 under the general heading, "Associations and Activities in Texas", for the reason that in the last paragraph thereof which purports to deal with Green's political activities and interest in politics in the State of Texas there has been omitted pertinent, relevant and uncontradicted testimony bearing upon Green's activities and interest subsequent to January, 1915. The findings of the Master are incomplete if the same purport to give a fair summary of Green's activities in Texas politics, inasmuch as the same raises the inference that subsequent to 1915 Green evidenced no interest or participation in politics in the State of Texas.

Complainant in this connection directs attention to the facts set out on page 49 of the Appendix to

Complainant's Requested Findings of Fact, which are as follows:

"The faction of the Republican Party, known as the Green-McDonald faction continued as a factor in Texas politics until 1928. In 1920 Green contributed $3000 to McDonald for political purposes (R. 469-470, 3391). On July 27, 1920 Green wrote Wilmot that, 'We may have been turned down at the Convention, but I think a few of the Green followers will be on top when it comes to dishing the officers (offices) if Harding is elected.' On January 19, 1925, Green wrote Allen that, 'In regard to the coming change in Postmasters at Terrell, if I am requested to endorse any candidate, you may rest assured that I shall do nothing until I hear from you.' In 1928 the Green-McDonald faction held district conventions for the election of delegates to the National Convention, while the Creager faction elected delegates from the state at large (R. 471-473. Likewise, the Green-McDonald faction was active in the 1936 campaign (R. 473-474). In 1928 it was agreed between Green and McDonald that if the Green-McDonald faction were seated in the National Convention that Green would be elected State Chairman again, and Green put up one-half of the expenses of the campaign." (R. 475-476).

III.

Complainant objects and excepts to the statement by the Special Master (Report page 35), to the

effect that during the third and closing period of Green's life, there was a withdrawal from his former association with Texas, because such deductions and conclusions on the part of the Master are unwarranted by the testimony and are not supported by the testimony in this case. The inference arising from such statement is that Green voluntarily withdrew from the former associations he had in Texas, whereas, under the record, his associations in Texas continued as they had been during the ten year period from 1911 to 1921. Said statement is incomplete in that, if it be found from the record that there was any withdrawal from Green's former associations with Texas, the contributing and primary cause for such withdrawal—his ill health —should be in all fairness set out as the cause for any such withdrawal.

IV.

Complainant objects and excepts to the findings and conclusions of the Special Master under the subhead of Round Hills Estate, South Dartmouth, Massachusetts, page 35 et seq., for the reason that such findings and conclusions are of an evidentiary character and are not ultimate facts. If the Master chooses to put the form of his findings in an evidentiary fashion, then all the evidence bearing upon the question of attachment, affection or regard for the locality known as Round Hills should be set down. In all fairness, therefore, it should be stated and found by the Master that the structure existing

on the property known as the old Howland Homestead was wholly neglected by Green, and that he refused to have such structure repaired and the same fell into such a great state of disrepair during his lifetime, that it was unsafe for visitors to go into such structure, and Green himself warned them against visiting such structure on account of its unsafe condition; that during the period of his life Green refused to have such structure repaired, although the cost of such repairs would have amounted to only about $2100. The report should also set out facts which reflect Green's utter disregard of affection or sentiment for the Round Hills property as an ancestral estate or as having any sentimental value or esteem to him, which is illustrated by the fact that he failed and refused to preserve mementos attached to the place and to its former residents, such as the old stone trough which was permitted to be broken into rocks for use in construction, and his causing a dog to be buried in the family or ancestral burial ground.

Said finding is further incomplete and incorrect in that it assumes an affectionate and sentimental regard on the part of Green for the premises known as Round Hills as an ancestral estate, in the face of a record in which there is no testimony of probative value showing or establishing any such sentiment or regard.

The Master has wholly failed to give effect to the undisputed testimony in the record that the house located on the Round Hills property was erected for

the purpose of building some character of memorial to the memory of Mrs. Hetty Green and for the purpose of being an institution of some character. The Master has in fact found that such house was institutional in appearance. The finding on page 56 of of the report that the monumental character of the building does not detract from its serviceability as a residence, is incomplete in failing to also set out that such monumental character and the expressions and activities of Green with reference to the same clearly negative any intention on his part to regard the same, at any time, as his domicile, or to make it his home, in fact or in intention.

V.

Complainant objects and excepts to the finding contained on page 39 of the report in which it is set out and held that "his (Green's) guests were limited to some old residents of New Bedford, visitors from Texas and his wards"; such finding is unsupported by the evidence, insofar as the inference may be drawn therefrom, that old residents of New Bedford or any residents of New Bedford were personal guests of Green at the premises known as Round Hills Estate. The record shows only one occasion on which any resident of New Bedford or Massachusetts was present at his house on any social occasion. The finding of the Master is incomplete, inasmuch as he does not find that Green deliberately eschewed the society of New Bedford and evidenced no interest in local, social, political or other affairs, as is fully established by the evidence.

VI.

The complainant objects and excepts to the finding by the Master to the effect that Green invariably gave as his reason for never openly acknowledging Round Hills as his legal residence that he wished to avoid paying taxes there. Such finding is on its face contradictory.

Such finding by the Master implies that Green privately acknowledged Round Hills as his legal residence, although no direct finding is made to that effect; such implied and inferential finding to the effect that Green acknowledged Round Hills as his residence privately is wholly unsupported by evidence; the inference that Green declared that he would not or could not acknowledge Round Hills publicly as his residence on account of taxes is likewise without support in the testimony.

If by this finding the Master has intended to hold that Green desired to and did retain his Texas domicile for the purpose of avoiding taxes in Massachusetts or elsewhere, such holding is wholly immaterial.

VII.

On page 42 of the report the Master finds that in 1915 Green had a yacht, United States, taken from the state of Massachusetts to avoid taxes thereon. Complainant objects and excepts to such finding because same is wholly immaterial, erroneous and un-

supported by the evidence. The yacht, United States, was not purchased until October 3, 1916 (R. 2928, 3562, 3580, 5354). Shortly after its purchase, Green went to Texas in it (R. 6782-6783). The incident to which the Master is evidently referring is set out on pages 216 and 217 of the Master's digest of the record, and the same occurred on February 26, 1919. At that time Green had no character of residence in Massachusetts. Green's desire not to pay taxes on the yacht in Massachusetts is wholly immaterial either as an evidentiary or ultimate finding in this cause.

VIII.

Complainant objects and excepts to the failure of the Master in his report to make a full and complete finding on the condition and state of Green's health during the period from 1915 to the date of his death. Complainant refers to what it deems to be a fair, full, and complete summary or statement of the evidence with respect to Green's health contained on pages 55 to 58, inclusive, of the Appendix to its requested findings of fact.

IX.

Complainant objects and excepts to the findings and conclusions of the Master and to the failure of the Master to give proper and due weight and importance to the condition and state of Green's health particularly after the year 1921. The state and

condition of Green's health was the determining factor and element in accounting for Green's infrequent trips to the State of Texas during that period, and in complainant's opinion is decisive, and likewise accounts for his movements and habits of life during that period which the Master has termed "nomadic".

X.

Complainant objects and excepts to the finding by the Master (Report page 51), that after the death of his mother and his marriage, Green relinquished his home in the Jarvis place in Terrell, Texas. This finding is contrary to the Master's statement and finding (which is correct) made on pages 24 and 25 of his Report, which shows that such room was rented in 1911 and kept for a period of three years. Such room was relinquished several years prior to the events of the death of Green's mother and Green's marriage.

XI.

Complainant objects and excepts to the statement by the Master in his finding (Report page 51) that Green, instead of returning to Texas, almost immediately after his marriage went to Round Hills where he and his sister owned what he regarded as an ancestral tract of land, purchased additional land and then proceeded to erect a palatial house which was completed and occupied by him in 1921. Such findings are incomplete and misleading, in that the

record undisputably shows that the trip Green and his wife made immediately after their marriage was made to Long Island, Block Island, and Buzzard's Bay, and shortly thereafter Green and his wife did return to Texas, making such trip on the yacht, United States. Such finding is misleading in that it would be inferred therefrom that Green immediately after his marriage purchased additional land at Round Hills and immediately after his marriage proceeded to erect a palatial house. The record undisputably shows that Green was married in July, 1917 and did not contract for the building of a house on the premises known as Round Hills until June, 1919, (D 271), and did not purchase additional land adjacent to the original Round Hills property for several years after his marriage.

The witness Davis (a Mass. witness) testified that at the time Green started making improvements on the Round Hills property that he declared unequivocally that he did not intend to erect a house there (D 307).

XII.

Complainant objects and excepts to the finding by the Master (Report page 52) to the effect that where declarations are self-serving and made with the intention to deceive, they will be disregarded, and the conduct of the party alone will govern. Such finding is not applicable to the facts contained in the record in this cause. Such finding and its application herein by the Master is itself an assumption

that Green's domicile was during all of such period elsewhere than in Texas. In other words, the Master has assumed that such domicile was not in Texas in order to find that fact.

XIII.

Complainant objects and excepts to the finding made by the Master (Report, page 52) as follows: "After 1921, Green's declarations that he had a legal residence in Texas were made to the taxing officials of New York, Massachusetts, and Florida for the purposes of escaping taxation in those jurisdictions. As a matter of fact, he had no actual abode or residence in Texas, and in law, had abandoned his former home there."

The true facts are that Green told Long, Commissioner of Taxation and Corporations of the Commonwealth of Massachusetts, that he wanted to consider himself a resident of Texas, and was not of the opinion that the time had arrived when he wanted to establish himself as a citizen of Massachusetts and a taxpayer (D 339). Furthermore, there is not a scintilla of evidence in the record justifying the implication in this finding of the Master that Green had deceived the taxing authorities of any of the respondent States or that he had misrepresented the facts as to his having or not having a place of residence and actual abode in the State of Texas at those periods. Moreover, the taxing authorities of all the respondent States had full opportunity of observing and considering all of the criteria and

indicia of residence relied upon by the Master, and this is particularly true of the witness Long, Commissioner of Taxation and Corporations of the Commonwealth of Massachusetts, since he personally visited Green at the Round Hills house, and full opportunity was afforded him of observing and evaluating all of the evidences of residence in Massachusetts relied upon by the Master in his report.

All of the taxing authorities of the three respondent States, New York, Massachusetts, and Florida, had full opportunity and all the means of ascertaining the facts with relation to Green's being or not being a resident of those States; and the taxing authorities of all three States evidently reached the conclusion that Green was not a resident of their respective jurisdictions, and abandoned all efforts to tax him as a resident. We qualify this last statement by conceding that after Green's death those in charge of his affairs received a notice from the Commonwealth of Massachusetts requiring them to file an income tax return.

XIV.

Complainant excepts and objects to the Master's finding (Report page 53) that Green was nomadic in his tastes and evidently regarded domicile as something distinct and apart from home or residence; because his nomadic tastes, if any, had nothing to do with his conceptions of domicile, home, or residence.

XV.

Complainant excepts and objects to the use mad by the Master of the finding that Green was no madic in his tastes; because even a nomad must hav a domicile, and the fact, if it be a fact, militate against the Round Hills residence as his true hom and permanent place of abode, as much so as th Florida residence and the several abodes in Nev York City; and the more of a nomad Green migh be conceived to have been, the greater reason for de termining that his domicile and true home was i Texas, which he had firmly established and fixe in his earlier years. There his hearth-stone was and, in all his wanderings, his heart and his hom was there.

XVI.

Complainant excepts and objects to the refusal o the Master (Report, page 54) to apply as against the respondent States of Massachusetts and Florida the same finding and conclusion made as to the abode of Green in New York, viz., that the evidence is insufficient to establish that Green intended to make the abodes in such States his permanent home. The same conclusion made against a permanent New York residence should have been made as to the abodes at both Round Hills and Star Island; and further because substantially the same indicia which the Master employed to reach the conclusion that Green, at his death, had established permanent homes in both Massachusetts

and Florida, apply with equal force to his New York residences. There is no more reason for rejecting the claims of New York, in this relation, than those of Florida and Massachusetts.

XVII.

Complainant excepts and objects to the finding by the Master, (Report page 52), that the domicile of choice established by Green in Texas in 1892 and maintained until 1911 was abandoned in fact, and his domestic establishment and all of his personal belongings removed to New York; because, it is manifest that the Master predicated such finding largely upon what he has termed an "admission of counsel;" whereas the only admission was that, after 1911, Green had no fixed abode or place of residence in Texas save his private car, and there was no admission that the Texas domicile had been abandoned, in fact or intention. Furthermore, such finding is not sustained by a fair preponderance of the evidence, much less by that degree of clear and convincing proof required by the law of those upon whom the burden of proving abandonment rests.

XVIII.

Complainant excepts and objects to the Master's using, as a predicate for the finding of abandonment of the Texas domicile, the citation from the general law of Texas that in order to constitute domicile, two things must concur: First, Residence; and Second, The intention of making the place of residence

one's home; because this was a mere statement o the law common to all the jurisdictions involved an was not peculiar to Texas; and further because those prerequisites and the concurrence thereof ar as necessary to the acquisition of a new domicile a they are to the establishment of an original domicile (Report, page 51.)

XIX.

Complainant excepts and objects to the Master's failure and refusal to recognize the principle that when a person has established a domicile of choice he does not lose it until he has acquired, in fact and intention, a new home; and further because, the Master has failed to recognize that while both fact and intention must concur to establish a domicile, intention alone will suffice to retain one. The latter principle is all important in this case, because of the singular lack of evidence to convincingly show that Green intended to make either the New York abodes, the Massachusetts or the Florida residence a home in the true sense; and because, of the impressive array of declaratory evidence to the contrary and the manifest intention of Green to maintain his home and domicile in Texas.

XX.

Complainant excepts and objects to the conclusion of the Master, (Report, page 52), that: "Undoubtedly residence, unless combined with intention, cannot affect and change the domicile, but where the

declarations are self-serving or made with intention to deceive they will be disregarded and the conduct of the party alone govern," and the use of this generalization to demonstrate the actual acquisition of a new home in Massachusetts; because, there is no evidence in the record that Green's declarations were self-serving or made with intention to deceive; but, on the contrary, his declarations were obviously sincere and honest, and were, in no proper sense, self-serving. If he found advantage in the tax laws of Texas and retained his domicile there for that purpose, it was an entirely proper motive and his declarations may not be disregarded and his conduct alone be made to govern. If his statements to the taxing officials of New York, Massachusetts and Flordia were for the purpose of escaping taxation in those jurisdictions, they were not fraudulent, if, in truth, his intention was to retain the Texas domicile and to enjoy the tax advantages of that State.

XXI.

Complainant excepts and objects to the acceptance, by the Master, (Report, page 53), of the idea that Green's attitude toward Texas was merely a "floating intention" of returning, with no fixed intention of retaining Texas as his home, because there is no evidence in the record to justify that conclusion; and further because, if there was any "floating intention" on his part it was always with relation to each and all the residences and places of abode in New York, Massachusetts and Florida, respectively.

XXII.

Complainant excepts and objects to the conclusion of the Master, (Report, page 53), that to Green home was one thing and domicile another; that to him *domicile* was a mental state where he could obtain certain political advantages and freedom from taxation, and *home* was where he happened to be for the time being with his wife and domestic establishment; because, the evidence wholly fails to sustain such conclusions; but, on the contrary, shows that Green had the proper conception of home, domicile and legal residence, regarded them as equivalents, and was fully advised by able counsel what was required to change his domicile.

XXIII.

Complainant excepts and objects to the Master's conclusion, (Report, page 53), that Green's conception of home, which determines domicile, was where he happened to be at the time being with his wife and domestic establishment. The Master, elsewhere in his report rejected and refused to follow this theory, because notwithstanding the years during which Green lived in New York with his wife, and maintained a domestic establishment there, the Master found Green never intended to make New York his permanent home.

XXIV.

Complainant excepts and objects to the Master's

conclusion, (Report, page 53), that to Green, home was where he happened to be for the time being with his wife and domestic establishment, because, if that be true, it would preclude a determination of domicile in favor of Massachusetts, as opposed to the claims of Florida, for the reason that he lived with his wife and had his domestic establishment seasonally in his residences in both States. The solution, under the conception adopted by the Master, would lead to the anomalous situation of a domicile in Massachusetts during the summer and a domicile in Florida during the winter, during the last ten years of his life, an obviously impossible result; the law being that a person can have but one domicile at death.

XXV.

Complainant excepts and objects to the Master's findings of fact and the application of certain selected legal principles to the facts (Report, pages 48-56); because the Master has unduly emphasized and has given undue weight and effect to the mere physical fact of residence; and because he has ignored or, at least, has given slight consideration and effect to the equally vital element of intention as manifested by Green's persistent, consistent and long continued declarations that Texas was his legal residence and home.

XXVI.

Complainant excepts and objects to the Master's

findings of fact because he has unduly emphasized and has given undue weight and effect to the undisputed fact that Green had no fixed place of residence in Texas after 1911, except his private car, which was fully equipped for living and available for his use only until 1928; because it is not necessary, in order to retain a domicile, that the domiciliary should have a place of residence in the domiciliary State.

XXVII.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the consistent and oft-repeated declarations of Green that Texas was his home and legal residence from 1911 until just before his death; it being undisputed and the Master has found that as late as March, 1935, Green testified, under oath in a judicial proceeding in Florida, that Texas was his legal residence; and as late as 1936, in his last illness, he expressed the desire to go back to Texas but was overruled by his physicians.

XXVIII.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the undisputed fact that Green, after he established his domicile in Texas, consistently exercised the important rights and duties of citizenship in Texas, such as voting, political activities, the pay-

ment of Federal income taxes; and persistently refused to vote, pay income taxes and intangible personal property taxes in any of the respondent States, and refused to become a resident of any of them.

XXIX.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the facts he has found, which are undisputed, in relation to voting and taxation in each of the respondent States, all such facts being undeniably in favor of Texas.

XXX.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect to the undisputed evidence that Green always regarded Texas as his home, after 1893, and consistently to the very end claimed that he was a resident of Texas; because such facts show Green's great affection for the State and her institutions, and her people, and reveals that his heart was there; together with a firm and tenacious purpose to retain Texas as his home and domicile; and because such sentimental considerations and attitudes are the very key to the solution of this case.

XXXI.

Complainant excepts and objects to the failure and refusal of the Master to give due weight and effect

to the refusal of Green to become a resident of any of the respondent States or to become a citizen thereof, even when advised by his personal Counsel to change his residence from Texas.

XXXII.

Complainant excepts and objects to the emphasis placed upon and the undue weight and effect given by the Master to the undisputed fact that Green's visits to Texas became less and less frequent in his later years; because that fact is fully accounted for by business considerations up to about 1921, and thereafter by his constant search for health, resulting in the Round Hills house as a place of abode in the summer and the Star Island mansion for the winter.

XXXIII.

Complainant excepts and objects to the Master's findings that Green, at his death, had two homes, one in Massachusetts and the other in Florida. The evidence fails to show that either was a home, in the true sense; but does show that Green never intended to make either Massachusetts or Florida his permanent home, the very test upon which he has rejected New York, upon similar indicia and criteria.

XXXIV.

Complainant excepts and objects to the Master's finding and conclusion that the case must turn upon the principle of determining between two principal

establishments; because the same indicia he has applied would require that Green's several places of residence in New York should be taken into account, and should become a part of the equation.

XXXV.

Complainant excepts and objects to the Master's virtual ignoring of the legal significance of the several New York places of residence maintained and occupied by Green after he left Texas; because it is undisputed that Green lived for years in a commodious and comfortably furnished house at 5 West 90th Street, fully staffed and equipped, and later occupied and lived in luxurious apartments in the Waldorf-Astoria and Sherry-Netherlands Hotels; and if they failed to become homes, for lack of intention, the same must be concluded as to the Florida and Massachusetts abodes, upon like indicia and criteria.

XXXVI.

Complainant excepts and objects to the application by the Master of the legal principle that when a person has two or more homes the court must determine which was the earlier or principal home (Report page 55); because neither the Round Hills estate nor the State Island residence was a home in the true sense, and, therefore, the rule is inapplicable to the facts in this case.

XXXVII.

Complainant excepts and objects to the adoption and application by the Master of the legal principle that conduct is of greater evidentiary value than mere declarations of intent (Report page 50); because under the facts as a whole and upon the entire record, the declarations of intention by Green were, in this case, of even greater probative force and evidential value than the conduct relied upon by the Master.

XXXVIII.

Complainant excepts and objects to the conclusion of the Master (Report, page 50), in effect, that Green's declarations are of no value because "made for the purpose of creating evidence in favor of the declarant after he has become appreciative of the consequences resulting from a change of domicile"; because there is nothing whatever in this record to justify the inference that Green's motives were fraudulent, in fact or in law, and because motives of tax avoidance or lessening are wholly immaterial.

XXXIX.

Complainant excepts and objects to the conclusion of the Master, in effect, that the declarations of Green must be disregarded and given no weight, since they were inspired by selfish motives (Report p. 49); because Green had the absolute right to re-

tain his Texas domicile from any honest motives whatever, and his declarations, in the absence of actual or legal fraud, were of the highest evidential value, because of their frequency, consistency, and sincerity, and their forthright nature; and because his motives, even if conceded to be selfish, were wholly immaterial.

XL.

Complainant excepts and objects to the statement of the Master (Report page 16) that "evidently the Texas case and the findings of fact requested by her counsel were prepared with this local law of the State in mind"; because the evidence introduced in behalf of Texas and the findings of fact requested by her counsel do not justify the inference that her case was prepared with any "local" law in mind; but, on the contrary, counsel for Texas frankly stated to the Master that the law of Texas on the subject of domicile was, in all essentials, the same as the general or common law prevailing in the other jurisdictions here concerned. The circumscribing of the Texas' case to the local law, merely, is wholly unwarranted and misleading.

XLI.

Complainant excepts and objects to the Master's failure to find that Green's domicile from 1911 to 1921 was in Texas, or that it was elsewhere! The Master having found that there was insufficient

evidence to show that Green ever intended to make New York his permanent home (Report, page 54), Texas is entitled to an affirmative finding that the domicile in that State continued, at least until 1921, when Green moved into the Round Hills residence. Otherwise, there would be a hiatus, leaving Green without a domicile at all during that period.

XLII.

Complainant excepts and objects to the weight seemingly given by the Master to the statement of Green to his attorney, in 1931, that he had no sentiment where his legal residence might be (Report, page 53); because this isolated instance is without legal significance and without probative value, in the light of the whole record, and is not to be taken too literally as the Master seems to have done.

XLIII.

Complainant excepts and objects to the findings of the Master (Report, page 52), as follows: "Thus, we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts"; because, without support in the evidence and contrary to even a fair preponderance of the evidence; and because the law requires such facts to be established by clear and satisfactory proof.

XLIV

Complainant excepts and objects to the finding (Report, page 52) that there was an actual abandonment of the Texas domicile and an actual acquisition of a new home in Massachusetts; because, there is not sufficient evidence in the record to show such abandonment or such acquisition, especially upon the vital element of intention.

XLV.

Complainant excepts and objects to the findings of the Master (Report, page 52), that "as a matter of fact, he (Green) had no actual abode or residence Texas (after 1921), and in law had abandoned his former home there"; because an actual abode or residence in Texas was not necessary for the retention of his home there; and abandonment could not be complete, without intention, and without both the fact and intention of acquiring a home in another place.

XLVI.

Complainant excepts and objects to the statement of the Master (Report, page 56), that "If, as counsel for the defendants say, we must disregard Green's early history, except in so far as it furnishes a historical background, and determine what was his actual domicile at death by considering

which of his three residences was the principal, predominant or permanent home, we arrive at the same end"; because in the nature of a finding that Green's early history is interesting only as a historical background; and because the Master has apparently accepted that theory in reaching his final conclusion; in the face of conclusive evidence that Green had formerly fixed and established a domicile in Texas, and in the face of the legal presumption, universally recognized, that such domicile continued and remained Green's home, until clear and satisfactory proof was adduced that such domicile had been abandoned, in fact and intention, and a new domicile acquired in one or more of the respondent States, *facto et animo;* the burden of proof on that issue being upon the Respondents, respectively.

XLVII.

Complainant excepts and objects to the inclusion by the Special Master of the photographs appended to his Report, for the following reasons:

(a) Such photographs have no legal significance and no probative force whatever in relation to any of the issues of the case.

(b) Such photographs are partial and incomplete, having been selected from many similar exhibits introduced at the hearings and on file in the cause.

(c) Such photographs are misleading or, at least, confusing; in that they portray, at most, residences,

interiors, and grounds potentially capable of use as homes, a fact conceded by complainant throughout the case.

(d) Such photographs have, at most, a comparative value, relating to the claims of Massachusetts and Florida, respectively; and, in such aspect, they reveal nothing to aid in resolving those conflicting claims. Either residence, at a glance, was potentially a home.

(e) Such photographs present a wholly inadequate and unfair (unwittingly, of course) picture of the residences and grounds portrayed; especially in this, that they fail to reveal the many public features attached to the Massachusetts residence, such as the hot-dog stands, the public bathing beach, the numerous road signs on the Round Hills estate, the radio station, the landing field, the old whaler "Morgan"; and the many other public features, contrasting with the Star Island estate. Those incongruous features which are indicia that the Round Hills estate was a proving or experimental ground, as Green himself characterized it, are abundantly shown by the testimony and by other photographic exhibits, and are necessary to a fair pictorial representation.

(f) Such photographs fail to reveal the many incongruities and bewilderments of the Round Hills estate, as shown by the evidence; features manifestly at variance with a home in its ordinary acceptation and in the legal sense; and, therefore, essential to a fair picture of the place.

(g) The Master, by selection, has limited and circumscribed the whole picture for the Court, and the effect of his method is to obscure and, perhaps to mislead. Only a fair consideration of all the exhibits will suffice for an adequate picture.

(h) Such photographs are not supportive, in any degree, of the theory the Master has adopted, nor of the conclusions he has reached; and, therefore, are without legal significance, if not wholly irrelevant.

XLVIII.

Complainant excepts and objects to the final conclusion of the Master (Report page 57) that the domicile of Green, at the time of his death, June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts; because:

(a) The finding is not supported by the evidence.

(b) A fair preponderance of the evidence shows that Green's domicile, at the time of his death, was in the State of Texas.

(c) The Commonwealth of Massachusetts has not, by clear and satisfactory proof, nor even by a fair preponderance of the evidence, rebutted the legal presumption that the domicile fixed and established by Green in Texas continued and remained his domicile at the time of his death; nor has any other party to this suit.

(d) The Master has thereby impliedly found that Respondents have fully discharged the burden of rebutting the presumption of continuance of the Texas domicile, by clear and satisfactory proof of abandonment and the acquisition of a new domicile; in the face of the evidence and contrary to at least a fair preponderance of the evidence.

(e) The Master (after having eliminated Texas upon the theory of abandonment, and New York because of insufficient evidence of intention to make a permanent home in that State) finding himself in a situation of perplexity, solved the question by, in effect, making his own choice between two residences of apparently equal claims, thus substituting his judgment for the choice of the decedent with whom it always rested. To state it differently, the Master has not exercised the judicial function of determining domicile, but of selecting one; whereas it is exclusively the province of a person to choose his own domicile, and the courts may properly do no more than determine, under all the evidence, where the person affected chose to make his domicile.

(f) The Master has made the case to turn and depend upon a comparison between a residence in Massachusetts and a residence in Florida, when the comparative claims of the two estates are so nearly equal, that it is impossible judicially to determine which, if either, was Green's true and permanent home; and when the evidence as a whole fairly discloses that Green himself had never made the choice

of either as his home, but both were seasonal residences, suited to the requirements of his health; and there is no basis in the evidence for concluding that the Massachusetts residence was the principal home and the Florida residence the secondary or subordinate one, as found by the Master—Report pp. 54-55.

XLIX.

Complainant excepts and objects to the Master's Report, in this: The Master, after having correctly found "that he (Green) had no close personal friends or associates in New York, and that the confinement resulting from this indoor life, bored him and made him unhappy," (Report 31), failed to apply the same criteria to Green's relationship to the Round Hills' estate. Those considerations evidently influenced the Master in finding that Green never had the intention to make New York his permanent home. The record abounds with evidence that in the later years of his life, Green lost practically all interest in Round Hills and was bored and unhappy there, as much so as in New York, and if that fact is to be a factor in determining that Green did not have his home in New York, at any time, the test should be applied also to Round Hills.

L.

In order of reference herein, it was expressly provided that "the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court." The

Special Master has obligingly filed printed copies of the requested findings and supporting memoranda submitted to him by counsel for the respective parties. In the Texas memorandum, the following "Findings of Fact," on the issue of domicile, were requested:

I.

The decedent, Edward H. R. Green, died at Lake Placid, New York, on the 8th day of June, 1936 (R. 246, 3409). Green was born in London, England, on August 22, 1868 (N. Y. Ex. 96, R. 4396-7), a citizen of the United States, of American parents who were domiciled in Bellows Falls, Vermont (Mass. Exs. 367, 369, R. 6224, 6231; Texas Ex. 288, R. 2323-4, 2327). There is no evidence of record that this domicile of origin was abandoned or lost and any other domicile acquired by him prior to the acquisition of his Texas domicile. His domicile of origin, however, was permanently abandoned and lost when he went to Texas in 1892 and took up his residence and made his home there. The Vermont domicile was never resumed, nor was there ever any reverter thereto.

II.

Between the years 1892 and 1911, and during all that period, Green actually

lived and had his abode in Terrell, Kaufman County, Texas, and in Dallas, Dallas County, Texas; and by his wide and varied activities, national, state and local, and by his general habits of life, had established and fixed his permanent home and domicile in Texas, with his legal residence in Terrell.

III.

It is undisputed, and, therefore, found as a fact, that Green left Texas in 1910 or 1911 for New York City, at the urgent request of his mother, Mrs. Hetty Green, who was at that time of an advanced age and possessed of a large fortune, and for the sole purpose of assisting her in the care and management of her vast affairs, centering largely in that city.

IV.

There is no evidence in the record establishing, or from which it may be reasonably inferred, that when Green left Texas for New York he was without intention of returning to his Texas domicile. The burden of proof on this issue being upon Respondents, and not having been discharged, it is found that Green at the date and in the circumstan-

ces stated was not without intention of returning to Texas.

V.

The preponderance of the evidence shows and therefore it is found as a fact that when Green left Texas for New York, he expected his absence to be temporary; and it is further found that when Green left Texas for New York it was his intention to return to Texas to live, to resume his residence, and to retain his domicile in that State, whenever the exigencies of his mother's business would permit. Green's removal to New York to assist his mother in her affairs was therefore neither with the intention of abandoning Texas as his domicile nor was it made with the intention of acquiring a new domicile in the State of New York or elsewhere. (R. 2438, Tex. Exs. 306-315, R. 2428-2443, 53, 68, 178, 199, 270, 271, 726, 4489, 4490, 3365, 2936, 2943, 2944, 2951, 3469, 3470, 3475).

VI.

From a preponderance of the evidence it appears and, therefore, it is found as a fact that the intention of Edward H.

R. Green to retain his home and legal residence in Texas, as manifested by his acts, declarations and attitudes, persisted and continued to the day of his death in June, 1936.

VII.

From a preponderance of the evidence it is found that there was never, in fact and intention, any abandonment by Edward H. R. Green of his Texas home and residence; but the same continued to his death, without change. By consistent and repeated oral and written declarations, by affidavits and under oath in judicial proceedings from 1894 to the date of his death, Green manifested and expressed his unmistakable intention of preserving his Texas domicile.

VIII.

From a preponderance of the evidence it is found that the frequent and prolonged absences of Green from the State of Texas, and the fact that for several years prior to his death he had not maintained a place of abode within the State, did not work an abandonment of the domicile therefore acquired by him with-

in the State of Texas; nor do these facts convincingly show any intention to abandon such domicile. The financial circumstances in which Green was situated after 1916; the fact that his business office was maintained in New York City, requiring his physical presence, and that the paper evidences of his intangibles were situated there (R. 2527); his cosmopolitan nature, and the condition of his health, particularly in the last 20 years of his life, materially restricting his movements and determining his seasonal whereabouts, and causing him to search for favorable climatic conditions, reasonably explain such absences and the lack of an abode in Texas.

IX.

It appears from a preponderance of evidence and, therefore, it is found as a fact that none of the residences and places of abode of Edward H. R. Green in the States of New York and Florida and the Commonwealth of Massachusetts, respectively, ever became his home and legal residence; but all such abodes failed, for lack of intention, to become his domicile.

X.

From a preponderance of the evidence it is further found that Edward H. R. Green died domiciled in the State of Texas.

XI.

It is further found that Green, in fact and intention, never established a permanent home nor acquired a domicile of choice in any other state nor elsewhere than in the State of Texas.

XII.

Specifically it is found that while Green, during the period from 1911 to June, 1936, the date of his death, occupied and lived in several places in the City of New York, viz: 5 W. Ninetieth Street, the Waldorf-Astoria Hotel, and the Sherry-Netherlands Hotel, he made neither of these places of abode, in fact and in intention, his permanent home; nor was either his domicile at death nor at any time prior thereto. He was not domiciled in the State of New York at any time.

XIII.

It is further found that while Green, during the period from 1921 to June, 1936, possessed and maintained a large estate, commonly referred to as his summer home, at Round Hills, South Dartmouth, Massachusetts, with an expensive and elaborately furnished mansion, in which he lived with his wife seasonally, for about five months in each year, it was not, in fact and intention, his home and permanent residence. The Round Hills estate was never the place of Green's domicile, nor was he ever domiciled in the Commonwealth of Massachusetts.

XIV.

About the year 1925 or 1926, Green built an expensive house on Star Island, Miami Beach, Florida, commonly referred to as his winter home. It, too, was elaborate, beautifully decorated and furnished, and was occupied by Green and his wife seasonally, for about four or five months in each year. But that residence was not, in fact and intention, his home and permanent residence. The Star Island house was never the place of Green's domicile, nor was he ever domiciled in the State of Florida.

The following "Conclusions of Law" were requested, also:

I.

The decedent Green, in fact and intention, was domiciled within the State of Texas during the period from 1893 to 1910, inclusive, with his home and legal residence in Terrell, Kaufman County, Texas. Such domicile was firmly established and fixed, with all the permanency required by the law.

II.

It is a presumption, applicable to this case, that the Texas domicile continued unless and until changed by abandonment and by the acquisition of an actual residence in some other jurisdiction, coupled with the intention of making such last acquired residence, a permanent home. This presumption is rebuttable, but the burden of proof is upon the party asserting the change; in this case, the several Respondents, respectively. The burden has not been discharged, and the presumption must be given full force and effect here.

III.

Giving effect to the presumption aforesaid, and in the absence of clear and satisfactory proof of a change of domicile, on the whole record, it is concluded as a matter of law from all the facts that the domicile of Green, at death, remained unchanged and was at such date within the State of Texas, at Terrell, in Kaufman County.

IV.

Edward H. R. Green, at death, was not domiciled in the State of Vermont.

V.

Edward H. R. Green, at death, was not domiciled in the State of New York.

VI.

Edward H. R. Green, at death, was not domiciled within the Commonwealth of Massachusetts.

VII.

Edward H. R. Green, at death, was not domiciled within the State of Florida.

VIII.

As the State of domicile at the time of Green's death, the State of Texas is exclusively entitled to collect and receive the tax upon the rights of transfer, succession or inheritance to all the intangible property of his estate wherever located.

All such conclusions of law were rejected by the Master. Only the first two of the requested findings of fact (and they by inference only) were accepted and adopted by the Master. We submit that all parties hereto are entitled to a clearcut, unequivocal finding that Green's domicile of origin, Bellows Falls, Vermont, was abandoned and lost, and that there was never any resumption thereof or reverter thereto. It is undisputed. We further submit that, under the overwhelming weight of the evidence, Texas is entitled to a positive finding that Green's permanent home and domicile, between the years 1892 and 1911, and during all that period, was established and fixed in Texas, and his legal residence was in Terrell.

As to the remainder of the requested findings, in behalf of Texas, III to XIV inclusive, we submit that a fair preponderance of the evidence sustains each and every one of them.

Under the reserved and customary power of the Court to supervise and revise the findings and con-

clusions of the Master, we respectfully ask that the foregoing findings, in substance at least, be adopted by the Court in lieu of the facts found by the Master. It is likewise asked that the Court adopt the Conclusions of Law, as presented to the Master in our printed memorandum. (Texas' Requested Findings, pp. 11-16.)

Complainant excepts and objects to the action of the Special Master in failing to find that the domicile of origin of Edward H. R. Green, in the State of Vermont, was permanently abandoned and lost when he went to Texas in 1892, or shortly thereafter, and was never resumed nor was there ever any reverter thereto; because those facts are established by the undisputed evidence.

Complainant excepts and objects to the failure and refusal of the Special Master to find, as requested by Complainant, that: "Between the years 1892 and 1911, and during all that period, Green actually lived and had his abode in Terrell, Kaufman County, Texas, and in Dallas, Dallas County, Texas; and by his wide and varied activities, national, state and local, and by his general habits of life, had established and fixed his permanent home and domicile in Texas, with his legal residence in Terrell"; because those facts are established by clear and satisfactory proof and by the overwhelming weight of the evidence.

Complainant excepts and objects to the failure and refusal of the Special Master to find as facts all requested findings, III to XIV inclusive, presented

to him by Complainant; because all such facts were established by a fair preponderance of the whole evidence.

Complainant excepts and objects to the failure and refusal of the Special Master to adopt or make substantially all the Conclusions of Laws, I to VII, inclusive, as presented to him by Complainant; because each and all such conclusions are correct and compelled from a fair preponderance of the evidence and the facts proven.

In connection with the above exceptions, we call the attention of the Court to the appendix to our Memorandum to the Master, which contains a fair and concise history and summary of the life and activities of Green, in lieu of the impracticable method of attempting to give detailed references to the record under each separate finding. The material facts supporting the requested findings will be there found.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1938.

No. 11, ORIGINAL.

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN and HETTY SYLVIA ANN HOWLAND GREEN WILKS,

Respondents.

EXCEPTIONS OF RESPONDENT, THE STATE OF NEW YORK, TO THE REPORT OF THE SPECIAL MASTER.

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THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HARLOW GREEN and HETTY SYLVIA ANN HOWLAND GREEN WILKS,
Respondents.

EXCEPTIONS OF RESPONDENT, THE STATE OF NEW YORK, TO THE REPORT OF THE SPECIAL MASTER.

The State of New York, Respondent herein, presents to the Court its exceptions to the Report heretofore filed by John Spalding Flannery, Special Master.

Throughout this Bill of Exceptions citations are made to the Digest of the evidence prepared by the Special Master, except in cases where (a) such Digest

does not contain the material from the Record to which it is desired to direct attention or (b) such Digest contains an incomplete or inaccurate statement of the material from the Record to which it is desired to direct attention, in which cases citation is made to the official transcript of the Record.

Where no citations are given in support of exceptions it is because the Record does not contain anything on the subject or the matter is so general in its nature that citations to the Record are not feasible.

Abbreviations used herein are as follows: R., Report of the Special Master; D., Digest of the Evidence; Rec., Official Transcript of the Record.

1.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that in 1887 Green's mother sent him from New York City to Chicago to look after her business interests there, that in 1892 he returned to New York and she then sent him to Texas to look after her business interests there, which consisted of her investment in the Texas Midland Railroad, and that in 1911 he again returned to New York to look after her business interests in New York City.

Tex. Ex. 288, D. 66-7; Rec. 297.

2.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special

Master failed to find the facts in relation to Green's whereabouts from 1910 to 1936, inclusive, as set forth in the Narrative Time Table submitted on behalf of the Respondent Wilks with her requested Findings of Fact and Conclusions of Law.

3.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that before moving to New York City from Texas in 1911 Green disposed of practically all of his business interests in Texas.

D. 6; D. 7.

4.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that when Green left Texas in 1911 and moved to New York City, he intended to and did leave Texas permanently.

R. 28 to 32, inc.; R. 51; Mass. Ex. 13, D. 32; Rec. 271; Mass. Ex. 14, D. 32; D. 27; D. 16, Rec. 398; Rec. 190; D. 242; N. Y. Ex. 95, Rec. 4393-4; N. Y. Ex. 157, D. 187; Tex. Ex. 288, D. 67; Mass. Ex. 191½, D. 236; Mass. Ex. 38, Rec. 4910-1; N. Y. Ex. 145, Rec. 4578-9; D. 205.

5.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Mas-

ter failed to find that Green became domiciled in the State of New York after he moved to said State from Texas in the year 1911.

6.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Walter H. Marshall, Green's secretary, made his home in New York City from the time he came there with Green in 1911 until the time of Green's death.

D. 240; Rec. 5555-6.

7.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's friends and business associates regarded New York City as his home.

N. Y. Ex. 148, D. 186; Mass. Ex. 10, Rec. 346-7; Mass. Ex. 7, D. 7; N. Y. Ex. 236, D. 201; Mass. Exs. 19, 20, D. 42; N. Y. Ex. 228, D. 197.

8.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Charles W. Pierson, of New York City, was Green's general personal and business attorney and that Dr. Henry S. Pascal, of New York City, was Green's personal and family physician.

Rec. 2268-9; D. 45; Rec. 2817; D. 165; Rec. 7348-9.

9.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had a private unlisted telephone in his apartment during the period that he lived at the Waldorf-Astoria Hotel in New York City.

D. 119.

10.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's private unlisted telephone in his apartment in the Sherry-Netherland Hotel in New York City was not discontinued until after his death.

Rec. 3052.

11.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the automobiles kept by Green in New York City were kept on "live" storage on a year-round basis, ready for service at any time, day or night, and were used frequently.

D. 115; D. 116; D. 160.

12.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that during the World War Green

subscribed to between three and three and one-half millions in Liberty bonds through New York City banks and organizations.

D. 155.

13.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the affidavits made by Green in 1916 for the purpose of "swearing off" the personal property assessment in the City of New York falsely and erroneously stated that Green was not and never had been a resident of the City of New York or the State of New York, and that he had been since 1893 and still was a resident of Texas, that his residence address was 503 Pacific Avenue, Terrell, Texas, that for twenty-three years last past he had been President and General Manager of the Texas Midland Railroad (Rec. 190; Mass. Ex. 7, Rec. 142; Tex. Ex. 373, Rec. 2868), and that he was Chairman of the Republican State Executive Committee of Texas for eight consecutive years beginning in or about the year 1896 (Rec. 450-1), and also because the Special Master failed to find that the whole assessment procedure in New York City in respect to personal property at that time was asinine (Rec. 4284-8).

14.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that on numerous occasions when Green was living in the Waldorf-Astoria and Sherry-

Netherland Hotels, in New York City, he referred to them, respectively, as his home.

N. Y. Ex. 103, D. 181; D. 165; N. Y. Ex. 108, Rec. 4460-1; D. 181; Mass. Ex. 44, D. 206; Mass. Ex. 11, D. 15; N. Y. Ex. 86, Rec. 3567-8; D. 198; N. Y. Ex. 60, D. 134.

15.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's protegees spent portions of their vacations with him in New York City.

Rec. 4146; D. 214; Rec. 5768; Rec. 6776; Mass. Ex. 194, Rec. 5290-1.

16.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that all of Green's personal correspondence files were kept at his office in New York City until he opened the Star Island house in 1927, after which the files were taken from place to place with him as he traveled, and that he had duplicate steel cabinets at Round Hills and Star Island in which he kept his correspondence during his sojourns at those places.

Rec. 5655; D. 251; D. 253.

17.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that an assessment has been made

against Green for income taxes in New York State, as a resident, from 1919 up to the time of his death, in the amount of $920,827.35.

D. 85.

18.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green always returned to his home in New York after visiting Texas, Massachusetts, and Florida, except during the last three years of his life when, by advice of counsel, he was an involuntary exile from New York.

D. 214; N. Y. Ex. 213, Rec. 4780; Mass. Ex. 29, Rec. 1240-1; N. Y. Ex. 129, D. 183; N. Y. Ex. 131, D. 183; N. Y. Ex. 319, D. 289; N. Y. Ex. 112, Rec. 4470; Rec. 8216-7; N. Y. Ex. 147, D. 185-6.

19.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Hetty Green expressed the wish that Green would build a monument to her at Round Hills.

D. 195.

20.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the Round Hills house was con-

structed by Green for other purposes than a home and he was using it until he had developed Round Hills for a memorial for his mother and his ancestors.

D. 199-200.

21.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had his name cut from the stone work of the Round Hills house after it had been placed thereon by order of the architect, saying that he did not wish his name to appear upon property owned by his mother or his ancestors.

D. 202-3; D. 199; D. 200.

22.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green was unwilling to have a tablet with his name on it placed on the lands at Round Hills that were owned jointly by him and his sister.

D. 199.

23.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had a red Neon sign, made of letters twelve feet in height, placed on top of the Round Hills house as an aviation beacon.

N. Y. Exs. 210, 218, 219, 220, D. 252.

24.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that it was necessary to heat the Round Hills house in winter in order to protect it from the elements.

D. 95; D. 247; Rec. 6819; D. 243.

25.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that by far the larger percentage of the electrical outlets in Green's house at Round Hills were concealed and intended for use when the building should be converted into an institution.

N. Y. Exs. 91, 91-A, 91-B, D. 174; D. 175; Rec. 7826; D. 310; Rec. 7143-5; Mass. Ex. 445, D. 330; D. 176.

26.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that subsequently to the first few years after the Round Hills house was built Green's sister, Mrs. Wilks, paid one-half of the taxes on it.

Rec. 3493; D. 128.

27.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green was not sufficiently inter-

ested in the Howland ancestral home at Round Hills to have it put in repair.

D. 179; D. 311; D. 251; Rec. 5555; D. 252; D. 302; D. 46; Rec. 4406-8.

28.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that, in 1925, after the foundation was constructed, Green abandoned the erection of a whaling museum at Round Hills because he thought the Round Hills house was better suited for that purpose, it being his intention to erect a smaller house on the Round Hills property for his use while spending the summers there.

D. 313; Fla. Exs. 28, 29, D. 316; D. 328; D. 315; Fla. Ex. 355, D. 396; D. 317.

29.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green discontinued his interest in photography and closed his photographic laboratory at Round Hills in the year 1928.

D. 305.

30.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green did not take to Round Hills any of the letters written to him by his mother, but kept them in New York City.

Rec. 4813-6; Rec. 4385.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Round Hills was a summer home in the ordinary sense of the term, and was so regarded by Green and his friends and associates, and was never intended by him to be his domicile, and that it had been used as a summer recreation place by his mother and by his great aunt, Sylvia Ann Howland, before him.

Tex. Ex. 349, D. 93; D. 298; Rec. 342; Rec. 343-4; Rec. 417; D. 38; Tex. Ex. 29, Rec. 1302; D. 90; Tex. Ex. 375, Rec. 2873; D. 113; Rec. 2951; D. 116; D. 175; D. 105; Rec. 8276; Rec. 3710; Rec. 5643-4; Rec. 5081-2; Rec. 6700-2; D. 317; Rec. 6716-8; Rec. 6446; D. 117; D. 162; D. 173; Rec. 4338-9; Mass. Ex. 48, D. 163; Tex. Ex. 377, Rec. 2876; N. Y. Ex. 119, Rec. 4494; N. Y. Ex. 135, Rec. 4549-50; N. Y. Ex. 136, Rec. 4553-4; Mass. Ex. 113, D. 273-4; Mass. Ex. 123, Rec. 5264; N. Y. Ex. 138, D. 184; N. Y. Ex. 120, Rec. 4497; N. Y. Ex. 121, Rec. 4500; N. Y. Ex. 125, D. 183; N. Y. Ex. 126, Rec. 4519; Tex. Ex. 387, D. 98; N. Y. Ex. 217, Rec. 4791; Mass. Ex. 236, D. 238; Mass. Ex. 237, D. 238; Fla. Ex. 363, D. 398; N. Y. Exs. 142, 143, 144, Rec. 4571-4; N. Y. Ex. 122, Rec. 4503; D. 325; N. Y. Ex. 127, D. 183; N. Y. Ex. 128, D. 183; Tex. Ex. 294, D. 73; N. Y. Ex. 136, Rec. 4553; N. Y. Ex. 137, Rec. 4556-7; Rec. 2730-1; D. 95-6; Rec. 2803-4; Mass. Ex. 147, D. 162; Mass. Ex. 147, Rec. 6027; N. Y. Exs. 211, 212, Rec. 4777-9; D. 90; Rec. 6508-9; Tex. Ex. 10, D. 40.

32.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that everything Green did while in Massachusetts indicated a seasonal vacation and relaxation from physical and mental effort.

33.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green and his secretaries and servants often referred to Round Hills as "the farm" or as his country place.

Rec. 870; Mass. Ex. 72; D. 232; Mass. Ex. 86, Rec. 5246; Mass. Ex. 74, D. 232; N. Y. Ex. 138, Rec. 4560; Fla. Ex. 363, D. 398; N. Y. Ex. 151, Rec. 4594; N. Y. Ex. 111, D. 182; N. Y. Ex. 116, Rec. 4477; N. Y. Ex. 136, Rec. 4553.

34.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that the grounds at Round Hills were used by the public in summer in much the same manner as an amusement park.

D. 245; Rec. 6656-7; D. 196; Mass. Ex. 373, D. 245; D. 295; Tex. Exs. 339 to 342, inc., D. 327; Texas Exs. 337, 338, D. 327; Rec. 7096-7101; Fla. Exs. 41 to 45, inc., D. 341; D. 341; D. 269; Mass. Ex. 271, D. 285; Fla. Ex. 366, Rec. 9559-61.

35.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that on different occasions when Green was taken seriously ill at Round Hills, his family physician in New York City, Dr. Henry S. Pascal, was sent for and attended him at Round Hills.

D. 165; Rec. 4182.

36.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green had been advised repeatedly, both by his personal general attorney, Charles W. Pierson, of New York City, and his local Massachusetts counsel, John M. Bullard, of New Bedford, that, so far as Massachusetts income taxes were concerned, it made no difference if he spent less or more than six months of the year in that state.

Mass. Ex. 71, D. 215; Mass. Ex. 287, D. 225; Rec. 7045; Mass. Ex. 288, D. 225.

37.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that it was the duty of Henry F. Long, as Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, to enforce the income tax law of that Commonwealth.

D. 338.

38.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that no assessment for income taxes was ever made against Green by the Commonwealth of Massachusetts.

D. 338.

39.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green gave up his memberships in Massachusetts social organizations long prior to his death, but maintained his memberships in New York social organizations as long as he lived.

Rec. 5650-1; Fla. Exs. 23, 24, D. 257; D. 110; D. 118; N. Y. Exs. 37, 38, D. 128; D. 133; N. Y. Ex. 47, D. 133; N. Y. Exs. 57, 59, D. 134, Rec. 3294; D. 137, N. Y. Ex. 79, D. 137; D. 134; N. Y. Exs. 27, 28, D. 126.

40.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green discontinued his contributions to the New Bedford Community Welfare Fund after 1928.

Rec. 3535; Mass. Ex. 59-A, D. 143-4.

41.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special

Master failed to find that Green's name was never on a jury list at South Dartmouth, Massachusetts.

Rec. 6818.

42.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that on numerous occasions subsequently to 1921 Green specifically denied that he was a resident of Massachusetts.

D. 88-9; D. 89; D. 95; N. Y. Exs. 142, 143, 144, D. 185, Rec. 4571-4; D. 94; D. 339; D. 328; Mass. Ex. 85, Rec. 5908; Tex. Ex. 290, D. 73; Tex. Ex. 18, 18-A, D. 49; Rec. 7132; Mass. Ex. 81, D. 217.

43.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Green's personal and family physician, Dr. Henry S. Pascal, of New York City, in 1923, advised him it would be necessary for him to spend his winters in the South, or a warmer climate, on account of his health.

Rec. 4167; Rec. 4169; Rec. 4181-2; D. 166; D. 263.

44.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that Star Island was a winter

home in the ordinary sense of the term and was so regarded by Green and his friends and associates, and was never intended by him to be his domicile.

D. 348; D. 350; D. 381; D. 382; Rec. 9026-7; D. 382; Rec. 8115-6; Rec. 8141-2; Rec. 8112; D. 348; Fla. Ex. 333, Rec. 9397; Fla. Ex. 217, D. 379; Fla. Ex. 335, D. 389; Mass. Ex. 211, D. 237; D. 162; Tex. Ex. 387, D. 98; Tex. Ex. 10, D. 40.

45.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that in his latter years Green devoted his activities to building up Star Island, while his interest in Round Hills declined.

D. 91.

46.

The Respondent, The State of New York, excepts to the Special Master's Report because the Special Master failed to find that, at his special instance and request, Green was buried in the burial plot at Bellows Falls, Vermont, which had been in his family for more than one hundred years, and contained the graves of his mother, father, grandmother, grandfather, and great great grandmother.

D. 39-40; D. 251; D. 141; Mass. Ex. 164, D. 255; D. 386; N. Y. Ex. 224, D. 196, Rec. 7698-9; N. Y. Exs. 206 to 209, inc., D. 193.

47.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 20, wherein he finds that Green joined clubs, societies and social organizations in every community where he dwelt but never attended them.

The Special Master should have found that, in most instances, he did not attend the clubs, societies and social organizations to which he belonged, but that the Union Club, one of the leading social clubs in the City of New York, was an exception.

Rec. 9347-8.

48.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that a portion of Green's stamp collection was kept in his apartment in New York City, and to that part of his report, on page 38, wherein he finds that the bulk of Green's stamps was kept in the vault in the basement of the Round Hills house.

The Special Master should have found that more than eighty percent of his stamp collection was kept in his apartment in New York City.

R. 34; R. 42.

49.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page

33, wherein he finds that Green's interest in his stamp collection had been slight since 1927.

The Special Master should have found that stamp collecting was Green's principal hobby and that he always maintained his interest in it.

Rec. 971-2; Rec. 3451; Rec. 3536; D. 157; D. 165; D. 166; Rec. 4804; D. 252; Rec. 8267; Rec. 8274; Rec. 8657; Rec. 8662-3; D. 373; Rec. 9030-1; Rec. 6318; Rec. 6315-6; D. 270; D. 294; Rec. 9044; D. 154; Rec. 5567; D. 252; N. Y. Ex. 85, Rec. 3542-3.

50.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 38, wherein he finds that Mrs. Mary Stafford lived at Round Hills each year from 1920 to 1927.

The Special Master should have found that Mrs. Stafford lived with the Greens at the Waldorf-Astoria Hotel in New York City, from 1920 to 1927, and, during that period, spent some time with them at Round Hills during the summers.

Rec. 4961-3; Rec. 4972-3; D. 214; D. 164.

51.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that Green, in the last three years of his life, avoided New York because of efforts to

serve him in certain litigation against the Directors of the Chase National Bank.

The Special Master should have found that, in the last three years of his life, Green, on the advice of his personal general counsel in New York City, avoided New York because of efforts to serve him in certain litigation against the Directors of the Chase National Bank.

D. 124; N. Y. Ex. 66, Rec. 3313; N. Y. Ex. 67, Rec. 3315; N. Y. Ex. 68, Rec. 3318; N. Y. Ex. 69, Rec. 3321-2; N. Y. Ex. 70, Rec. 3324-5; N. Y. Ex. 71, D. 135; N. Y. Ex. 72, Rec. 3328-9; N. Y. Ex. 73, Rec. 3331-3; N. Y. Ex. 74, Rec. 3334-5; N. Y. Ex. 75, Rec. 3336-7; N. Y. Ex. 76, D. 136; Rec. 5558; D. 95.

52.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 35, wherein he finds that in August, 1917, Green determined to develop the Round Hills property into a great estate and build there a monumental home.

The Special Master should have found that in August, 1917, when Green first considered developing the Round Hills farm, he intended to build a dock there at which to moor his steam yacht, the "United States," and a water tower to supply the yacht with water, and intended to live on the yacht during the summer seasons, using the farm for recreational purposes and to raise fresh vegetables and other supplies for the yacht.

D. 306; D. 307; D. 308; Rec. 6582-3; Rec. 6574-6.

53.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 38, wherein he finds that after the winter of 1921-22, a skeleton staff of seven or eight servants was left in the Round Hills house in the Winter, and the remainder went back and forth between Round Hills and Florida.

The Special Master should have found that in the winter of 1921-22 a full complement of servants was kept at Round Hills and that thereafter until the Star Island house was opened in 1927 the servants at the Round Hills house were employed for the summer season only, with the exception of a few who remained the year round as caretakers, but after the Star Island house was opened, most of the servants employed at the Round Hills house during the summer season were taken to Florida for the winter season.

Rec. 6815; N. Y. Ex. 136, Rec. 4552-4; N. Y. Ex. 137, Rec. 4556-7; Rec. 5540-1; Rec. 2803; D. 326-7.

54.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 39, wherein he finds that the Round Hills house was kept heated throughout the Winter, but the furnishings were covered and protected.

The Special Master should have found that each year when Green left Round Hills, at the close of the sum-

mer season, the house was closed, storm doors were put on and the windows were boarded up, the furniture and pictures were covered with cloths, the silverware was put away in a safe, the china was wrapped up and put away, the linen was put away, the flowers that had been used in the house were put back in the greenhouses, the main kitchen was closed up so that it could not be used, and the draperies and hangings were covered with cloth bags.

Rec. 2776-7; Rec. 2801-2; D. 243; Rec. 5539-49.

55.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on pages 41-2, wherein he finds that all of Green's personal and intimate belongings remained at Round Hills until his death.

The Special Master should have found that all of the letters written to Green by his mother, whose memory he revered, and the major portion of his stamp collection, which constituted his principal hobby, were kept in New York City until his death, and that other of his belongings of a personal and intimate nature were kept both at Star Island and Round Hills.

R. 33; R. 34; R. 42; Rec. 4813-6; Rec. 4385; Fla. Ex. 118, D. 360; Rec. 8168-9; Rec. 8137-4; Rec. 8142-3; Rec. 8150.

56.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 42, wherein he finds that, in 1915, Green had his yacht

"United States" taken out of the State of Massachusetts to avoid taxes.

The Special Master should have found that, in 1919, Green had his yacht "United States" taken out of the Commonwealth of Massachusetts to avoid taxes, but that such taxes were those levied on nonresidents on the basis of the physical location of the yacht and had nothing to do with Green's domicile. If Green had been a resident the yacht would have been taxable in Massachusetts without regard to its physical location.

Mass. Ex. 79-A, R. 5108-11.

57.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 42, wherein he finds that Green never openly acknowledged Round Hills as his legal residence, invariably giving as his reason that he wished to avoid paying taxes there.

The Special Master should have found that Green always claimed that Round Hills was not his legal residence, and sometimes stated that he did not wish to establish his legal residence in Massachusetts because of the tax laws of that Commonwealth.

See Exception No. 42 and Citations thereunder.

58.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 21, wherein he finds that aside from Green's railroad ac-

tivities in Texas between 1892 and 1911 he was never in any active business or devoted to the making of money, for the reason that said finding is not sustained by the evidence, *e. g.*, R. 25-6; R. 28; R. 29-31; R. 35.

The Special Master should have found that Green was very active in business in Texas and New York and gave the same his personal attention until he was incapacitated in 1921, after which his business affairs were principally conducted through his office in New York City, and that he was devoted to the making of money throughout his life.

59.

The Respondent, The State of New York, excepts to the following statement found on page 51 of the Report of the Special Master:

> "After his mother's death in 1916, his marriage in 1917 and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and reestablished himself in an actual permanent home there. Instead of doing so, he relinquished his nominal abode which he had obtained by renting a room in the house of Mrs. Jarvis in Terrell, which he never occupied, and in the visits he made to Texas in subsequent years to attend the meetings of his Railroad Directors, to vote, or for the purpose of taking medical treatment, he stopped at hotels or at the Buie Sanitarium at Marlin."

The room in Texas was given up in 1914. What Green might have done after his mother's death and his marriage is purely speculative. The fact is that he continued to make his home in New York City as he had done since 1911.

D. 203; Mass. Ex. 365, R. 6220-2.

60.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 21, wherein he finds that Green's income from 1917 on was from $200,000 to $1,200,000, for the reason that it is inaccurate.

The Special Master should have found that Green's annual income from 1917 on ranged from $1,453,213.43 to $2,191,578.87.

D. 129.

61.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 29, wherein he finds that Green became a director of the Seaboard National Bank on July 7, 1918, for the reason that such findings is not sustained by the evidence.

The Special Master should have found that Green became a director of the Seaboard National Bank on July 7, 1910.

D. 157.

62.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 32, wherein he finds that Green, during the latter half of 1917, lived on the "United States" anchored off West Eighty-sixth Street, New York City, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that after his marriage on July 10, 1917, Green spent several weeks cruising on the "United States" on Long Island Sound and then went to Round Hills, after which he returned on the yacht to New York and then went on a cruise to Texas, from which he returned to New York just before Christmas and lived at Five West Ninetieth Street for a couple of weeks, including Christmas of 1917 and New Years of 1918.

R. 111; R. 114; R. 206-7; R. 112.

63.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that when Green moved from the Waldorf-Astoria Hotel to the Sherry-Netherland Hotel in New York City, in 1929, he wanted to preserve the atmosphere of the old Waldorf, on the ground that such finding is not adequate.

The Special Master, in addition to and enlargement upon his finding, should have found that Green personally selected the furniture which he desired to have moved, which included all of the furniture of his bedroom suite and office; that he requested that the rose-colored damask draperies in the Waldorf-Astoria be removed to the Sherry-Netherland, where they were hung in the large living room; that Green was not anxious to move but thought that by going to the Sherry-Netherland where he would be with the people who had been at the Waldorf-Astoria, he would feel much more at home; that he wanted to take some of the atmosphere of the old Waldorf with him and, as it

was intended to render as much as possible the same type of service at the Sherry-Netherland as had been given at the Waldorf-Astoria, he thought he would feel very comfortable there.

Rec. 4431-5; Rec. 4439-42.

64.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that the Greens had no dining room and Green ate at his desk or on a card table at the Sherry-Netherland Hotel in New York City, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that the Greens had a dining room and used the regular private dining service supplied by the Sherry-Netherland Hotel when they lived there.

Rec. 8273; Rec. 9477; D. 169; N. Y. Ex. 13, Rec. 3089-93; N. Y. Ex. 102, D. 180; D. 181.

65.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 33, wherein he finds that during the last ten years of Green's life his apartment in New York was used as a temporary sojourning place on his trips North and South, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that during the last ten years of his life Green lived in the Wal-

dorf-Astoria and Sherry-Netherland Hotels in New York City in the same manner that he had lived in the Waldorf-Astoria for the preceding eight years, except that during the last three years of his life he stayed away from New York City on advice of counsel, and that his principal absences from New York City were for the purpose of visiting his summer place in Massachusetts and his winter place in Florida.

66.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 54, wherein he finds that there is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York for the reason that it is a negative finding, is unwarranted and unduly colors the findings to the prejudice of the Respondent, The State of New York. If any finding of this character is appropriate, it should be that there is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York, Massachusetts or Florida.

67.

The Respondent, The State of New York, excepts to the following statement found on page 54 of the Report of the Special Master: "In a sworn statement to the taxing officials of New York, he declared that he was not and never had been a resident of

New York", for the reason that such statement gives unwarranted color to the Report in view of the fact that it was made for the purpose of avoiding personal property taxes in New York City and therefore is not entitled to weight. It was made for the purpose of creating evidence in favor of the declarant after he had become appreciative of the consequences resulting from a change of domicile to New York (See Special Master's Report, page 50, fourth full paragraph).

68.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 35, wherein he finds that from 1918 to 1921 the development of the Round Hills property was Green's principal occupation, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that from 1918 to 1921 Green carried on his business affairs in New York City in the same way that he had done for many years previously, and that although he spent the summers at Round Hills, while there he made weekly business trips of several days duration to New York. While at Round Hills he gave attention to developments there.

69.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 36, wherein he finds that Green stated that if he sur-

vived his sister, Mrs. Wilks, he would have the entire ownership of the Round Hills property and, if she survived, she would own it as residuary devisee under his will executed in 1908, for the reason that the record is barren of any evidence to sustain such finding.

70.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 36, wherein he finds that Green retained the whole Round Hills estate of about 270 acres up to the time of his death, for the reason that said finding is not sustained by the evidence.

The Special Master should have found that the main portion of said estate, consisting of about 130 acres upon which the Round Hills house stood, was owned by Green and his sister as tenants in common up until the time of his death.

D. 297; Rec. 6370-1; Rec. 6560-1.

71.

The Respondent, The State of New York, excepts to the following statement found on pages 53-4 of the Report of the Special Master: "He did have some unformulated notion of leaving a memorial to his mother, his sister and himself and the granite edifice at South Dartmouth on the land that had been in his family for generations, surrounded by maritime antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, seem-

ed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living" for the reason that there is no substantial evidence in the Record to support it.

72.

The Respondent, The State of New York, excepts to the following statement found on page 56 of the Report of the Special Master:

"Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out"

for the reason that the Record does not contain any evidence that Mrs. Green gave consideration to what would happen in the event her husband should die, and the conclusion of the Special Master with respect thereto is wholly speculative.

73.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 45, wherein he finds that Green's Star Island house contained no library, no framed pictures or mementoes of his ancestors or articles of a sentimental nature or personal associations as at Round Hills, for the reason that said finding is contrary to the evidence.

Rec. 8137-8; Rec. 8142-3; Rec. 8150; Rec. 8168-9; Fla. Ex. 118, D. 360; Tex. Ex. 327, R. 4098, item E 233.

74.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 47, wherein he finds that Green never conducted in Florida any of the activities or experiments which occupied him in Texas and Massachusetts for the reason that such finding is not sustained by the evidence.

The Special Master should have found that although Green's Star Island residence was of an entirely different character than his place at Round Hills, being homelike in its surroundings as distinguished from the semi-public character of the Round Hills place, and the condition of his health had changed materially when he commenced his activities at Star Island from what it had been when he was in Texas and during the early summers at Round Hills, his activities and experiments and interest in scientific and recreational matters continued while he was at Star Island to be relatively as great as they had been in Texas, New York and Massachusetts.

Rec. 9029; Rec. 9020; Rec. 9042; Rec. 8267-8; Rec. 8275; D. 359; Rec. 8446-7; Fla. Ex. 176, D. 369.

75.

The Respondent, The State of New York, excepts to that part of the Special Master's Report, on page 55, wherein he finds that Green's personal counsel, Charles W. Pierson, in 1931 and again in 1933, advised him to formally adopt Florida as his legal residence, for the reason that such finding is not sustained by the evidence.

The Special Master should have found that Charles W. Pierson, Green's personal general counsel, advised him to consider changing his legal residence to Florida in the event Texas should enact an income tax law, but such a law was never passed.

N. Y. Ex. 170, D. 192-3; Mass. Ex. 304½, D. 226.

76.

The Respondent, The State of New York, excepts to the following statement found on page 17 of the Report of the Special Master:

> "The defendants all proceed upon the theory that what happened prior to the time when Green moved into his several places of abode is not material and only of historical interest and that the place where he had his principal, predominate habitation and permanent home at the time of his death was his domicile regardless of the past, * * *".

The Special Master has misapprehended the theory of the Respondent, The State of New York. New York's position is that what happened prior to the time Green acquired his summer home in Massachusetts and his winter home in Florida is of the highest importance in the determination of the issue. This will be fully developed in the brief to be submitted on behalf of The State of New York.

77.

The Respondent, The State of New York, excepts to the Conclusion of the Special Master, on page 57 of

his Report, that the domicile of Edward Howland Robinson Green at the time of his death June 8th, 1936, in fact and in law, was in the Commonwealth of Massachusetts.

The Special Master should have concluded that the domicile of Edward Howland Robinson Green at the time of his death was in the State of New York.

Respectfully submitted,

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WILLIAM M. O'REILLY,
Assistant Counsel.
December 12, 1938.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11 ORIGINAL

THE STATE OF TEXAS,

Complainant,

vs.

THE STATE OF FLORIDA, *et al.*,

Respondents.

BRIEF FOR COMPLAINANT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11 ORIGINAL.

THE STATE OF TEXAS,

Complainant,

vs.

THE STATE OF FLORIDA, *et al.*,

Respondents.

BRIEF FOR COMPLAINANT

To the Supreme Court of the United States:

Statement of the Case.

A. **Origin and Nature of the Case:**

Complainant instituted this suit in the Supreme Court of the United States by Bill of Complaint, in an original action, against the State of Florida, Commonwealth of Massachusetts, State of New York, Mabel Harlow Green, the widow of Edward H. R. Green, and Hetty Sylvia Ann Howland Green Wilks, the sister of said Green, to determine the domicile of Green, who died June 8, 1936, at Lake Placid, Essex County, in the State of New York, where he was temporarily sojourning, leaving an estate exceeding $40,000,000, comprising real estate and tangible personal property located in the States of Texas, Florida, Massa-

chusetts and New York, and intangible property, consisting of stocks, bonds and securities the bulk of which was represented by paper evidences within the State of New York. The respondents have all filed answers. Mrs. Green has since been dismissed from the suit and is no longer a party. (300 U. S. 643 and 668.)

It will be a sufficient statement of the nature of the case to say that the Bill of Complaint, upon which the Court took jurisdiction and directed the filing of answers by all the respondents, alleged a controversy of a civil nature between two or more States of the United States of America and between a State and citizens of another State, within the original jurisdiction of this Court; that at the time of the death of said Green he was domiciled in the State of Texas and not in either of the States of Florida, Massachusetts or New York; that under the laws of each of the respective States, a transfer, succession or inheritance tax was imposed upon and assessable against the estate of the decedent wherever located; that the net estate of the decedent was insufficient to pay the Federal estate tax and the aggregate of the taxes claimed by the four States. Both individual respondents were joined as parties to the suit, upon the averment that they respectively asserted the right and privilege of succession, and upon appropriate averments as to their relation to the property and estate of decedent. The Bill of Complaint contains relevant averments as to proceedings in the state courts with relation to the administration of and right of succession to the property of the decedent, such proceedings, however, having no relation to the tax claims of the States, parties to this action.

In their several answers, submitting to the jurisdiction of this Court, the sovereign parties respondent denied that Green was domiciled in the State of Texas and each asserted

that it was the domicile of Green, and that as the domiciliary State, it had a claim against the estate and exclusive jurisdiction to collect such taxes; with the admission that the question of the domicile must be decided before the question of tax liability could be settled. None of the parties challenged the right of the United States to collect the Federal estate taxes.

The respondent, Mrs. Wilks, in her answer denied that Green's domicile was in Texas and prayed the Court to determine in which of the other States his domicile was for the purpose of the taxation of his intangible personal property, etc. Mrs. Wilks, however, is now actively supporting the claim of Massachusetts for domicile.

Upon the joining of the issues herein, the Court appointed a Special Master, to conduct hearings, take testimony and to report to the Court. In the order of reference, it was expressly provided that "the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court." The Master has filed his Report, with his findings, conclusions and recommendations for a decree in favor of the Commonwealth of Massachusetts, and with a recommendation that the Court reserve jurisdiction for certain purposes. The cause, therefore, is now before the Court upon the Master's report and the exceptions, objections and requests for amended or substituted findings in behalf of the States of New York, Florida and Texas, respectively.

Special Master:

The Master has conducted hearings in all of the States concerned, with full opportunity to all parties to present their testimony and exhibits; and the evidence adduced at such hearings is contained in 11 volumes, comprising some

9800 pages of testimony and 1484 exhibits, filed with the Clerk. His Report is in two volumes. The first contains a statement of the pleadings and the issue raised thereby, the findings and conclusions, both as to jurisdiction and domicile; his recommendations for a decree and for reserved jurisdiction. The second volume, styled "Appendix A", purports to contain a Digest of all the Evidence and Exhibits. Before reaching his findings and conclusions, and making his report, the Master invited requested findings and supporting memoranda from counsel for all the parties; which privilege was availed of by counsel, and printed copies thereof have been filed in the cause.

C. **The Facts:**

a. JURISDICTION:

The jurisdictional facts found by the Master in his report, pages 10-15, are believed to be fully sustained by the evidence; we have no objections thereto and ask the Court to approve and adopt the same.

The Master found that the value of Green's total gross estate at the time of his death was $40,144,229.73, and that debts and administration expenses total $4,006,894.07, leaving a net estate of $36,137,335.66. The total net tax payable to the United States by said estate was found to be $17,520,987.93, and the Master further found that the tax claims of the respective States, secured by liens under the local laws, were as follows: Texas $4,685,057.73, Florida $4,663,857.40, New York $5,910,301.80, Massachusetts $4,947,008.59. The value of Green's net estate was found to be insufficient by the amount of $1,589,877.79 to satisfy the Federal estate tax and the aggregate of the taxes claimed by the four States.

b. DOMICILE:

It would be impracticable, of course, to set out in a brief ll the facts of this complicated and intricate case. As to he evidentiary facts, we have conceded that in the main hey are shown by the Master's Digest. By and large it is hought to be a fair summary of the material evidence; but his concession was not intended to imply that such digest as complete and accurate in all respects. If any latitude or editing is allowable at all, it should contain all the evi- ence and not exclude that portion which in the mind of the igester may be unimportant or irrelevant. In this connec- on, we call attention to the appendix which we submitted the Master, appended to our requested findings of fact, ages 39-78. The summary is by no means complete and d not purport to contain all the evidentiary facts, but it is ought to contain the principal and important facts, and ay prove more readable than the Master's voluminous gest.

Many of the facts found by the Master under the head- g, "Findings of Fact," pages 19-48 of the report, are ubtless true, and may be accepted by the Court as the lient facts of the case. It is to be noted, however, that no empt has been made to distinguish between ultimate and identiary facts. Few are ultimate, many are evidentiary, d still others are mixed. Those facts found by the Master ich are objectionable to complainant we have attempted indicate in our exceptions and objections; and they will pointed out in the course of the brief. Some of these and ers have been excepted and objected to by counsel for er States. A wider statement of the facts is not deemed essary.

D. **The Issue:**

The ultimate issue raised by the pleadings and the evidence is whether Edward Howland Robinson Green was at the time of his death on June 8, 1936, domiciled in the State of Texas or the State of Florida, or the Commonwealth of Massachusetts or the State of New York, for the purpose of determining which of said States has the exclusive right and jurisdiction to impose and collect the succession, transfer, or inheritance tax imposed by the domiciliary State upon the intangible personal property owned by said Green at the time of his death.

Subsidiary to this, the ultimate issue, we submit the following as practical issues, under both pleadings and evidence:

a. Was Green domiciled in Texas between and during the years 1892 and 1911?

b. If he was so domiciled, was that domicile ever abandoned and a new domicile acquired, in fact and in intention, in any of the respondent States?

c. Did Green ever have a bona fide, fixed intention to abandon his Texas domicile, if any, and a fixed intention to acquire a new domicile in any other place?

Constitution and Statutes Involved.

Constitution of the United States, Article III, Sec. 2.

Texas Inheritance Tax Statutes—

Vernon's Texas Statutes, 1936, Arts. 7117, 7120, 7133, 7144a. The Texas Statutes relied upon are set out in Appendix A, Bill of Complaint.

Applicable Legal Principles.

In our memorandum to the Master, we cited numerous rules of law, in the field of domicile, taken largely from Restatement, Conflict of Laws, A. L. I.; Beale, Conflict of

Laws; Kennan on Residence and Domicile; and from Texas Jurisprudence. We also cited a long list of supporting cases. In this brief we expect to shorten the references, and to refer only to rules deemed especially applicable and important. The adjudicated cases we expect to repeat, as sources of law obtaining in all the jurisdictions here concerned.

Every person has at all times one domicile, and no person has more than one domicile at a time. (Restatement, Sec. 11, Conflict of Laws, A. L. I., page 23.)

Domicile is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by the law. (Restatement, Section 9, page 17.)

A domicile (of choice) is acquired by establishing a dwelling-place with the intention to make that place the home. (Restatement, Sections 15, 18; Beale, Conflict of Laws, Sections 10.3, 15.2.)

A domicile once acquired continues until the acquisition of a new domicile, and the old domicile is presumed to continue; therefore the burden of establishing the abandonment of such domicile and the acquisition of a new one is upon him alleging it. (Restatement, Sections 15, 23; Beale, Sections 23.1, 23.2.)

A domicile once acquired may continue notwithstanding that the house of the domicile has been sold or destroyed. It will continue until a new domicile has been acquired. (Restatement, Sections 12, comment b, and 23; Beale, Section 23.1.)

No mere length of residence is sufficient to create a change of domicile in the absence of

such an intention to make the new residence a home. (Beale, Sections 18.1, 22.3.)

Motives are immaterial, in changing residence or in retaining a domicile, provided the intention to change or to retain, as the case may be, is real. This is true whether the motive be to escape taxes, secure a divorce, or what not. (Beale, Section 22.1.)

Absence from the domicile for purposes of health, pleasure or business does not affect the domicile. (Beale, Sections 22.2, 22.4, 22.7; Restatement, Section 13, comment e, illustration 4.)

It cannot be too carefully noted that both fact and intention are necessary only for the purpose of acquiring a new domicile and not for the purpose of retaining a domicile already acquired. (Beale, Section 23.2.)

Home is not a mere synonym for house. To effect a change of domicile, there must be not only the acquisition of a new residence but the intent to make it a home as well. (Beale, Section 13.4.)

A home is a dwelling-place of a person, distinguished from other dwelling-places of that person by the intimacy of the relation between the person and the place. (Restatement, Section 13.)

A person cannot change his domicile by removal to a new dwelling-place without an intention to make the new dwelling-place his home. (Restatement, Section 18.)

A domicile one established continues until it is superseded by a new domicile. (Restatement, Section 23, comment.)

The rule that in every case of conflicting facts and of ambiguous domicile the presumption is strongly in favor of an original as against a newly acquired domicile is so important that we feel justified in invoking specially certain rules stated in Kennan on Residence and Domicile:

"In every case of change of domicile there are three essential elements which must concur, viz.: First, A definite abandonment of the former domicile. Second, Actual removal to, and physical presence in the new domicile. Third, A bona fide intention to change and to remain in the new domicile permanently or for an indefinite time.

"Nothing is better settled in the law of domicile than that every change must be facto et animo—in fact and intent. It is also elementary that every man must have a domicile somewhere, that the presumption is against a change of domicile and that the burden of proof rests upon the one alleging a change of domicile." Kennan, pages 194-5. (See Footnote, page 194.)

"* * * 'A change of domicile must be a change of residence sine animo revertendi. A temporary residence for the purpose of health, travel, or business does not change the domicile. Also (1) every presumption is to be made in favor of the original domicile; (2) no change can occur without an actual residence in a new place; and (3) no new domicile can be obtained without a clear intention of abandoning the old.'"

"* * * For example, if a person leaves an established domicile with no expressed intention of permanent removal, the presumption is that his absence will be temporary * * * 'The domicile of origin must prevail, unless it be proved that the party has acquired another by residence, coupled with an intention of making that his sole residence and abandoning his domicile of origin.'" Kennan, pages 64-65.

"The onus of proving the change is on the party alleging it (the presumption of law being that a

domicile, one acquired, subsists until a change is proved), and this onus is not discharged by merely proving residence in another place, which is not inconsistent with an intention to return to the original domicile, for the change must be demonstrated by fact and intention.' Kennan, page 738. (See also 15 Texas Jurisprudence, 708-715.)

ADJUDICATED CASES.

"Domicile" distinguished from "Residence":

Perkins *v.* Guaranty Trust Co., 8 N. E. (2d) 849, 274 N. Y. 250. Re-argument denied Perkins *v.* Perkins, 10 N. E. (2d) 589, 274 N. Y. 636.

Brown *v.* Boulden, 18 Tex. 432.

Pittsburg Water Heater Co. *v.* Sullivan, 115 Tex. 417, 282 S. W. 576.

Cross *v.* Everts, 28 Tex. 523.

Graves *v.* Campbell, 74 Tex. 576, 12 S. W. 238.

Minick *v.* Minick (Fla.), 149 So. 483.

Herron *v.* Passailaigue (Fla.), 110 So. 539.

Wade *v.* Wade (Fla.), 113 So. 374.

Viles *v.* City of Waltham, 157 Mass. 542, 32 N. E. 901, 34 Am. St. Rep. 311.

O'Rourke *v.* Ft. Worth Star Telegram (Tex.), 19 S. W. (2d) 136.

Presumption of continuance and burden of proof:

Perkins *v.* Guaranty Trust Co., 274 N. Y. 250; Id. 274 N. Y. 636.

In re: Rotholz' Estate, 300 N. Y. S. 56.

Atwood *v.* Atwood (Mass.), 8 N. E. (2d) 916.

Ness *v.* Commissioner (Mass.), 181 N. E. 178.

Connolly *v.* Phipps (Mass.), 186 N. E. 646.

Brown *v.* Brown (N. J. Ch.), 165 A. 643.

In Re: Wolf's Estate, 258 N. Y. S. 444, 144 Misc. 256.

In re: Wendels Estate, 259 N. Y. S. 260, 144 Misc. 467.

In re: Lachenneyer's Estate, 258 N. Y. S. 641; 144 Misc. 678.

In re: Beachwood, 254 N. Y. S. 473, 142 Misc. 400.

In re: Curtis' Will, 250 N. Y. S. 146, 140 Misc. 185.

In re: De Coppet's Estate, 252 N. Y. S. 654, 141 Misc. 406.

Katz *v.* Katz (Mass.), 174 N. E. 202.

Inhabitants of Chicopee *v.* Inhabitants of Whately, 88 Mass. (6 Allen), 508.

In re: Newcomb's Estate (N. Y.), 84 N. E. 950, 192 N. Y. 238.

Smith *v.* R. B. I. Build. Corp., 215 N. Y. S. 1, 126 Misc. 826.

Dodd *v.* Dodd (Tex.), 15 S. W. (2d) 686.

Bilbs *v.* Bilbs (Miss.), 177 So. 772.

Caheen *v.* Caheen (Ala.), 172 So. 618.

Rosa *v.* Rosa (Mass.), 5 N. E. (2d) 618.

Johnson *v.* Harvey (Ky.), 88 S. W. (2d) 42.

Wheeler *v.* Burgess (Ky.), 93 S. W. (2d) 351.

Anderson *v.* Miller (Pa.), 182 A. 742.

In re: Pusey's Estate (Pa.), 184 A. 844.

Hite's Admr. *v.* Hite's Exr. (Ky.), 97 S. W. (2d) 811, 265 Ky. 786.

Intent dominant factor:

Hite's *v.* Hite's, *supra.*

In re: Bennett's Estate (N. Y.), 238 N. Y. S. 723 Misc. Rep. 486.

Town of Washington *v.* Town of Warren (Conn.), 193 A. 751; 123 Conn. 268; See also *In re:* Newcomb's Est., 192 N. Y. 238, 84 N. E. 950.

Long-continued absence not alone sufficient to work nge of domicile:

Stallforth *v.* Helvering, 77 F. (2d) 548—Cert. denied 56 Sup. Ct. 123.

In re: Lohmann's Estate (N. Y.), 283 N. Y. S. 38; 157 Misc. 169.

Town of Plymouth *v.* Inhabitants of Town of Kingston (Mass.), 193 N. E. 576.

Wagner *v.* Scurlock (Md.), 170 A. 539.

In re: Dorrance's Estate (N. J.), 170 A. 601, 115 N. J. Eq. 268.

Tuelle *v.* Flint (Mass.), 186 N. E. 222.

McDonald *v.* Hartford Trust Co. (Conn.), 132 A. 902, 104 Conn. 169.

Mitchell *v.* U. S., 21 Wall. (U. S.) 350, 353; 22 L. Ed. 584 (Quot. *In re:* Davis, 217 F. 113, 115).

Less evidence required to retain established domicile:

Pusey's Estate (Pa.), *supra;* 184 A. 844.

Registering and voting most convincing:

In re: Curtis' Will, *supra* (N. Y.).

Houston Printing Co. *v.* Tennant (Tex.), 39 S. W. (2d) 1089; See also Kennan, page 153 and footnote; page 155, footnote, page 156, page 219.

The following are all cases in which voting was received as evidence upon the question of domicile:

People ex rel. James *v.* Surrogate's Court, 36 Hun 218 (N. Y. 1885).

Matter of Wise, 84 Misc. 663, 146 N. Y. S. 789 (1914); reversed in 165 App. Div. 420, 150 N. Y. S. 782 (1914).

Matter of Kane, 93 Misc. 406, 156 N. Y. S. 1004 (1916).

Fisk *v.* Chicago, R. I. & P. R. Co., 53 Barb. 472 (N. Y. 1868).

Marks *v.* Germania Sav. Bank, 110 La. 659, 34 So. 725 (1903).

Harvard College *v.* Gore, 5 Pick. 369 (Mass. 1827).

Schultz *v.* Barrows, 8 Okla. 297, 56 Pac. 1053 (1899).

Lee *v.* Boston, 68 Mass. (2 Gray) 484 (1854).

Greene *v.* Burkhardt, 11 Ohio Sup. & C. P. 399 (1900).

Guggenheim *v.* Long Branch, 80 N. J. L. 246 (1910); Aff'd 83 N. J. L. 628, 84 Atl. 21 (1912).
Dalrymple's Est., 215 Pa. 367, 64 Atl. 554 (1906).
Cooper's Admr. *v.* Commonwealth, 121 Va. 338, 93 S. E. 680 (1917).
Fidelity Tr. & Safety Vault Co. *v.* Preston, 96 Ky. 277; 28 S. W. 658 (1894).
Tuttle *v.* Wood, 115 Iowa 507, 88 N. W. 1056 (1902).

The following are cases in which the payment of taxes was received as evidence of domicile:

People ex rel. James *v.* Surrogate's Court, *supra.*
Beattie's Est., 129 Misc. Rep. 241, 221 N. Y. S. 726 (1927); aff'd 222 App. Div. 729, 225 N. Y. S. 792 (1928).
Fisk *v.* Chicago, R. I. & P. R. Co., *supra.*
Matter of Kane, *supra.*
Schultz *v.* Barrows, *supra.*
Lee *v.* Boston, *supra.*
Babcock *v.* Slater, 212 Mass. 434, 99 N. E. 173 (1912).
Bowen *v.* Commonwealth, 126 Va. 182, 101 S. E. 232 (1919).
Greene *v.* Burkhardt, *supra.*
Guggenheim *v.* City of Long Branch, *supra.*
Chase *v.* Chase, 66 N. H. 588, 29 Atl. 553 (1891).
Helle *v.* Deerfield Twp., 96 Ill. App. 642 (1901).
Tuttle *v.* Wood, *supra.*
Cooper's Admr. *v.* Commonwealth, *supra.*
Dalrymple's Est., *supra.*

Physical presence and continuous living at old domicile t necessary:

In re: Brown's Will, 133 Misc. 457, 233 N. Y. S. 145.
Cooper's Admr. *v.* Commonwealth, 121 Va. 338, 93 S. E. 680.
See also People ex rel. James *v.* Surrogate's Court of Putnam County, 36 Hun 218 (N. Y.), cited in Kennan, . page 625.

From the above list of cases, we suggest a careful reading of two, especially. *Matter of Newcomb*, 192 N. Y. 250, contains a clear statement of the law of New York, upon almost every relevant principle of domicile. *McConnell* v. *Kelley*, 138 Mass. 372, cited with approval in the *Newcomb* case, is upon the question of the immateriality of motives in the selection or retention of a domicile, when honest and when made in good faith.

Summary of Points Involved.

These have already been indicated in our statement of the issue. They will now be stated in the form of propositions:

I.

E. H. R. Green was domiciled in Texas between and during the years 1892 and 1911.

II.

Green never had a bona fide, fixed intention to abandon his Texas domicile; nor did he have a fixed intention to acquire a new domicile in any other place.

III.

Green's Texas domicile was never abandoned, in fact and intention.

IV.

Green never acquired, in fact and intention, a domicile in either of the States of New York or Florida or in the Commonwealth of Massachusetts.

V.

Green, at the time of his death, was domiciled in the State of Texas.

Argument.

These five propositions are so closely related that they properly may be considered and argued together. As the phases of domicile in Green's life variantly presented by the conflicting claims of the States require separation into periods, we shall consider them accordingly.

The case is *sui generis*. No other like it will be found in the books. Its novelties and its intricacies will attract and intrigue the Court. It is the story of a strong, vibrant, busy man who, at the zenith of his powers, was called by a mother's entreaties from his home in Texas, the State he loved so well, to manage her business; and who, after her death, spent years in another State concerned with her affairs and later with the management of the vast fortune to which he and his sister succeeded. Then came the grave illness which made him virtually an invalid the rest of his days. In a ceaseless quest for health, he was ever in flight; as he himself expressed it: "Following the sun." These considerations and others which will be pointed out prevented and will account for his failure to return to the State of his domicile to live.

It will require the greatest nicety of discrimination to find the key to the riddle of Green's final domicile. It will require, likewise, a detachment not to be expected from the interested parties, with such a vast stake. Happily this tribunal affords that disinterested approach and detachment. The Court is never impressed with size, but concerns itself with principles only. The calm, dispassionate judgment of the Court may be trusted to find the solution of all the intricacies of the case and to render the right judgment, no matter what State prevails.

We realize the deference which courts have always shown, and properly shown, the report and recommenda-

tions of a master. In this case, we are faced with an adverse report of the Special Master. The burden to refute is upon us, and we accept the responsibility. Happily, there is nothing sacrosanct about the report of a master. It must stand or fall on its merits. His findings and conclusions are subject to the supervision and approval of the Court. In this case, the Court in the order of reference has expressly provided that "the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court." We appreciate the prodigious labors of the Master. His industry and fidelity are not open to question. But we have been impelled to lodge numerous objections to his findings, his conclusions and his recommendations. Our critique has been prepared in no spirit of cavil; and we hope no carping criticism will creep into our brief. Our approach has been and will be one of respect, no matter how vigorously expressed.

We have concluded to repeat the argument made to the Master, in our supporting memorandum to requested findings, with some elaboration, of course, in view of the report and the exceptions. It failed to convince the Master, but the Court may possibly be more favorably impressed. That argument, *mutatis mutandis*, was as follows:

Under the issues of the case, the ultimate question is: Where was Edward H. R. Green domiciled at death? The decision of that question will determine the right of the successful State to the taxation on the transfer of the intangible personal property of the estate.

The discussion of domicile, insofar as Texas is concerned, will fall under two periods: That from 1893 to 1911, and from the latter year to the date of death of Colonel Green, in 1936. For the purposes of the other States, the

life of the Colonel and conditions may lend themselves more advantageously to further separation by periods. We shall treat all periods from 1911 as one. We see no point in our trying to reconcile the conflicting claims of our adversaries; nor in tracing progressive acquisitions and abandonments, as will be claimed by some of them. If Green ever acquired a domicile in any one of the other States and retained it to his death, there is no question of reverter or reacquisition.

There is much in the record of no real materiality or significance upon the ultimate issues. Many "tall tales" have crept into the record, and there are many incidents and episodes which shed no light upon the question of domicile or claimed abandonment. They may serve to amuse or to reveal the unique personality of the Colonel, his eccentricities, vagaries, caprices and idiosyncrasies. They also serve to show his great capacity for enjoyment. The Court, we apprehend, will not be much concerned with them. There is one thing, however, we wish to emphasize. Many of these incidents are revealing on the sentimental side of the Colonel and the deep sense of affection of which he was capable. We do not speak now of the abiding love for a woman, but for a State, her people and her institutions. As the argument proceeds, we shall show the value of sentimental considerations which may, indeed, furnish the real clue to the determination of this difficult case. The background of affection and attachment for Texas drawn from an experience of more than 15 years of actual living within the State, innumerable activities and contacts, resulted in a permanency of attachment, which has the greatest significance and importance in connection with his subsequent actions and habit of living. These considerations will be of special importance on his supposed abandonment of the State as his domicile, and his supposed acquisition of a new domicile.

These remarks are made at the outset of the discussion of the facts, because eminent authority has approved the principle that a man's home (or domicile) "is where his heart is." We hope to show that the Colonel's heart was in Texas, his first domicile of choice, and that that attachment persisted throughout all the years of his life. He brought his heart to Texas and he left it there, despite the long absence, occasioned by considerations of business and health. It is certain that the Colonel's heart was deeply rooted in Texas soil. One of the questions the Court must decide is whether it was ever torn from that soil, by any voluntary act or intention.

We think it appropriate to dispose of a contention sought to be raised by the introduction of a statute of Texas which has become a part of the record. We do not know that counsel for any of the adversary States will contend that such statute is controlling, or that it will have any important bearing on the case. We must, however, impute some purpose to the tender of this statute. It is the part of prudence, therefore, to briefly consider the particular statute and to give our views thereon.

The statute to which we have referred is Article 2958 of the Revised Civil Statutes of Texas, of 1925. So much of the statute as has any possible relevance here reads as follows:

> "The residence of a single man is where he usually sleeps at night; that of a married man is where his wife resides. * * *"

This statute, prior to the Revision and as originally enacted, was Section 4 of Chapter 11, Acts of the 29th Legislature (1905), page 521. The title of the Act was as follows:

"An act to regulate elections and to provide penalties for its violations, and to repeal the acts of the 28th Legislature of 1903, regulating elections, general, special and primary, and political conventions, approved April 1, 1903."

The Act was and is a comprehensive statute for the regulation of elections in Texas. The caption, body of the Act and emergency clause, all reveal, unmistakably, that this was the primary and sole purpose of the enactment. It has no relation to the question of domicile for any other purpose than to define voting residence.

We may add, appropriately, we think, that while Colonel Green habitually exercised the privilege of voting in Texas, Article 2958 had application to him and restricted his right to his residence as defined, namely, to the place where he usually slept at night. When he took up his actual abode in other States, and no longer had a place of residence in Texas, it is manifest that the standard of this statute not only had no further application to him, but it is obvious that it was incapable of application. Since he had no "place where he usually slept at night" (in Texas) the test could no longer be applied. The old residence continued to control, just as when he lived in the State.

While there are some judicial utterances to the contrary, we feel on safe ground in saying that the place a man regards as his home, how he regards that place, is of the utmost importance in determining domicile; not in the face of the facts, perhaps, when conclusively shown to be inconsistent, but certainly of great weight on the vital question of intent. How otherwise are we to ascertain that intimacy of relation, sentiment, and association so necessary to the making of a home? How determine where "his heart" is? How locate, unerringly, his "hearthstone"? And who so

well qualified to speak as the one most vitally concerned? That is why declarations and formal recognitions are admitted, especially when in the nature of *res gestae*. Such evidences are of the greatest value here, where we see such apparent ambiguity arising out of many residences and acts and attitudes. The acts and declarations relied upon must, of course, be honestly done, honestly made. No fraudulent or fictitious thing will be of any value whatsoever. It will be our task to point out that none of the declarations, acts or attitudes of Colonel Green, with relation to Texas, was assumed or was tainted with fraud. It is to be remembered, however, that motives are immaterial. If Colonel Green preferred Texas because of her tax laws, or for any other legitimate reason, it did not affect his absolute right of choice. We shall have occasion to suggest many good reasons why the Colonel made and held on to (not merely "desired") Texas as his home.

1893-1911.

We shall first discuss briefly the period from 1893 to 1911. In presenting the picture of Colonel Green's life and activities in Texas during the period under discussion, we shall show the outstanding and more significant facts only. Detail is unnecessary; it would be an imposition at this point in the inquiry.

When Colonel Green came to Texas in 1892 to take charge of his mother's railroad, he plunged immediately into that business. Under competent tutelage, he rapidly learned the railroad business and began the active management and direction of the road. He worked untiringly and under his close and intelligent direction, the road soon reached a high degree of equipment and efficiency, ranking with the finest railroads in the State. He was, in fact, the

railroad, it often being referred to as a "one man" railroad. He continued as its President and Director until after its sale in 1928, and actually until 1932. It was undoubtedly the Colonel's chief business activity, it was his "joy and his pride." It is worthy of note that the Texas Midland extension from Commerce to Greenville was not completed until 1921. The Colonel planned to take over the Trinity and Brazos Valley, in which he owned considerable stock, and make it a part of the Midland, but his illness prevented.

Among other business activities were the Demonstration or Experimental Farm near Terrell; the Green Floral Company at Dallas, a concern doing a large wholesale and retail flower business; substantial stock holdings in business concerns, such as the Murray Company (manufacturers of gin machinery), and many others too numerous to mention. He had close business connections and affiliations with the Terrell and Dallas banks. He was greatly interested in scientific subjects, mechanical and other innovations, and inventions of all sorts.

He enjoyed the social side of life and joined many clubs, fraternities and organizations. He was genial, affable, unconventional, and mixed with all sorts and conditions of men. He made thousands of friends, in all walks of life, and had many intimates in the business and professional world.

One of Colonel Green's activities, in which he took great delight, was politics. He was a political leader and was regarded as, perhaps, the outstanding Republican of the State. He gave both time and money to the cause and held high office in the Party.

He regarded Terrell as his home throughout and paid his poll taxes there; although exempt, under the Texas

statute, because of the loss of one leg. He voted regularly at Terrell and continued to do so for at least a decade after he left Texas. It is a fair inference that he continued to vote there, even after that, through absentee ballot, and after he obtained a permanent certificate exempting him from further payment of poll taxes. The official records, pursuant to the election laws, have long since been destroyed.

In innumerable deeds, papers, and documents he described himself invariably as of Terrell, Texas. He consistently and persistently claimed Terrell as his legal residence and home.

Colonel Green had several places of residence in Texas. At Terrell they included his bachelor apartments and his private car. This car was always parked on the railroad for his use, and it was specially constructed and equipped for living and for his requirements. Probably he spent more time there than at any other place. When he took up residence at Dallas he went to Terrell almost daily, and worked and lived on the car. There was also a house on the Experimental Farm near Terrell, built and equipped for living purposes; but he seldom occupied it and at irregular intervals only.

After about 1896, Colonel Green had, from time to time, several residences or places of abode in Dallas. He had hotel apartments at the Windsor and Oriental, and, later, commodious and comfortable residences in the city. He made his federal income tax returns to the Collector at Dallas, and continued that practice to the very end. For the purposes of this case, however, it is not important to decide whether the Colonel's home was in Dallas or Terrell. It is sufficient if it was in either, but it is worth remembering that the Colonel always regarded and claimed Terrell as his home and legal residence.

The interests and activities of Colonel Green in Texas were so numerous and so varied that it is practically impossible to enumerate them. It is sufficient to say that long before 1911, he had so identified himself with the State that he was recognized as one of her outstanding and most useful citizens. There can be no manner of doubt that Colonel Green by his long residence and his manner and habit of life for nearly two decades, had firmly fixed and established his home and legal residence, therefore his domicile, in Texas. The depth, the sincerity, and the permanence of the ties which bound him to Texas are not open to question. Argument is inadmissible. With such a background of attachment and sentiment, it must be concluded inevitably that the Colonel left Texas reluctantly and for the most compelling reasons only. Counsel will be hard put, we think, to give any sound reasons whatever for claiming that Colonel Green was not domiciled in Texas from 1893 to 1911.

1911-1936.

Green continued with the construction of the railroad through 1921; and remained as President and Director until July 1932. He retained close control and supervision, and exercised full control until its sale to the Southern Pacific in 1928. He kept in close touch, requiring weekly reports; the only change in such reports after 1911 being that they were transmitted by letter rather than personally or across the table as formerly. He attended the annual meetings of the Texas Midland railroad, with one exception, every year until it was sold in 1928.

Green's continuing interest in Texas is further shown by the following acts: He continued to make his returns of federal income taxes to the Collector at Dallas. During the war, he subscribed for $5,000,000 in Liberty Bonds through

the American National Bank of Terrell, his old bank. In 1920, he offered the First National Bank of Terrell, in which he owned no stock and in which he had no financial interest, $250,000 to be placed to its credit in the Federal Reserve Bank at Dallas. The purpose of this proffer was to prevent an anticipated run on the bank; and he came to Terrell and offered more if needed. In May, 1921, a similar incident occurred at Dallas, involving the Security National Bank. His action in both instances saved the banks.

Green voted regularly at Terrell until 1920, at least, and paid poll taxes every year until he became exempt, for age, in 1928, when he was entitled, under Texas laws, to a permanent exemption certificate. The election records are no longer extant, but it is by no means certain that he did not continue to vote, by absentee ballot, as long as his health allowed. He was proud of his Texas citizenship and loved to vote.

Green kept in touch with his old friends in Texas. He never lost his affection for any of them. With all the eminent doctors at his command and in frequent attendance upon him, it was Dr. Buie, of Marlin, who was recognized and regarded as his chief medical adviser.

Of compelling force, we think, is the evidence of the Colonel's persistent refusal to change his residence from Terrell to Florida. He resisted the importunities of his friend Walter Allen, and his arguments in favor of Florida as a domicile. He was fully aware of the financial advantages which would accrue to him by a change in domicile to Florida. He was well advised by his personal attorney, Mr. Pierson, as to the steps necessary to effect a change of residence; Pierson stressing the element of intention, inasmuch, we suppose, as he was well aware that the Colonel had a house at Round Hills and hotel apartments in New York City, in addition to the Star Island place. But all efforts

to induce a change failed. If he wavered, Green's momentary indecision ended when the threat of income taxes in Texas passed. The probative value of this evidence, on the issue of intent to retain the old domicile, especially, cannot be fairly denied.

Green's instructions, to the very day of his death, were to show Terrell as his residence, in all documents and papers. His declarations to the same effect, both oral and written, are almost without number, as shown by the testimony and exhibits in the record. The deepest sentiment and attachment for his beloved Texas was often manifested; and it is to be observed that, in this case, sentimental considerations are of the greatest significance and value. When, in 1936, the inroads upon his health brought him to the sad state of approaching dissolution, he wanted to go back to Texas, notwithstanding the disappointing experience of the year before at Marlin. But even Dr. Buie advised against it. His advice prevailed; so the end came at Lake Placid instead of in Texas.

The Colonel's exercise in Texas of the rights and duties of citizenship, such as voting, the payment of taxes as a resident, and the holding of office in his party, have been mentioned. Another tie to Texas is found in the circumstance of his appointment by Governor Colquitt to the Governor's personal staff, this being the origin of the title "Colonel." He accepted and attended the inaugural at Austin in January, 1911, in full uniform. Two years later was re-appointed to the Staff; and he was always proud this honor and his commission as a citizen of Texas, ached to the Governor.

A noteworthy fact in the record relates to the establishnt of the "Terrell Trust" in 1923. Green settled at rrell, Texas, a trust for the benefit of several young

ladies, his protegees, in whose education and support he had shown an interest for years. The instrument was dated April 9th, 1923, and provided the sum of $100,000.00, Walter P. Allen, of Terrell, and Mrs. Wilks being named as trustees. The Trust was to terminate at the end of ten years after Green's decease. In the case of vacancies in the office of trustees, it was provided that same should be filled by Henry C. Coke and Edwin M. Reardon of Dallas, Texas, two of the Colonel's dearest and most trusted friends. No bond was required of the trustees, and wide discretion in the administration of the trust was vested in them. A specially significant circumstance is that in Paragraph 1, the Colonel suggested the type of investment he preferred, naming the "Murray Company of Texas" as an example. In 1933, the Trust was amended. The amendment specially noted the deaths of both Coke and Reardon; and provided that vacancies should be filled by some unnamed persons from "_____ County, Texas." The significance of this evidence, we think, can hardly be overstated.

Through all the years of Green's absence, the evidences of an unbroken affection, loyalty and love for Texas, her institutions and old friends in that State, form one of the most remarkable phases of this remarkable case. In form of manifestation, they differ somewhat, of course, but in sincerity and consistency they are "without variableness or shadow of turning." They furnish convincing, if not conclusive, proof that Green regarded Texas as his home (not merely "domicile") to the end of his days.

We feel justified in emphasizing two very important proofs and phases of intention, occurring within the last two years of the Colonel's life:

In the record there appears a striking episode, having to do with the Colonel's interest in and assistance to the

Texas Centennial of 1936. In 1934, he had been appointed as a member of the Memorial Museum Committee, but ill health prevented active participation. He subscribed for large numbers of the Centennial stamps, for outgoing mail and for his collection. This stamp issue was, in fact, suggested by the Colonel, as a means of advertising the Centennial. Finally came the award of a certificate of Distinguished Service to Texas and the Centennial.

When Colonel Green received the certificate, he found that his residence was shown as Massachusetts. He promptly returned it by letter dated January 15, 1935, from Miami Beach, saying: "This is not correct, as I have never changed my legal residence from Terrell, Texas, and if it is not too much trouble, I would thank you to make the change. I am returning the certificate." The certificate was corrected accordingly and returned January 23, 1935, with the Committee's expression of delight that Texas could continue to claim the Colonel as a citizen. (R. 1014-1049.)

Here is evidence of the most formal and unequivocal character that Colonel Green as late as 1935, regarded, declared, and insisted that Terrell, Texas, was his home and legal residence (in the Colonel's mind and heart, as in law, they were the same). Written from "Star Island," and in direct relation to the very subject of residence and citizenship, the declaration was *res gestae* and is of compelling force.

Not only was the very issue of domicile here raised, but it is extremely significant that it was the Colonel who raised . He promptly and decisively challenged the mistaken sumption of the Centennial officials, and requested the ange from Massachusetts to Texas. The episode takes great legal significance and weight, for that it involved, . cessarily, a repudiation of the claims of every one of the

respondent States. Massachusetts was expressly repudiated. The rejection of New York and Florida was no less certain, although impliedly done. The positive designation of Texas as the legal residence excluded those States as certainly as if they had been expressly named.

The record will be searched in vain for any evidence inconsistent and irreconcilable with this express declaration or for any clear and convincing evidence showing any change of intention or attitude, or militating against the clear conclusion that the Colonel's mind and heart were unalterably fixed upon Texas as home; that it was his hearthstone. One more tie of affection and loyalty to Texas, and one more manifestation of it; and in the very shadow of death! Need more be said?

Of striking significance, also, in this record are the facts revealed by the testimony of Dr. Charles Frederick Roche of Miami Beach (R. 7318-7330). The consultation, at which he first met the Colonel, took place at Star Island, Miami Beach, in February, 1934. At the time, Colonel Green was an invalid, suffering from heart trouble and pernicious anæmia. During the two years following, the Doctor visited him in a professional capacity almost daily. In some of those visits the Colonel discussed the subjects of his residence more than once. He discussed Texas and his friends there, his long life in that State and the fact that his business interests largely were there. He concluded by stating to the Doctor that his residence was in Terrell, Texas.

After testifying that the Colonel's stay at Star Island was generally during the winter season, from November to April, sometimes May, he traced his patient's movement from Florida—to Massachusetts in the summer of '34, to Marlin in '35 and to New York State in '36. Dr. Buie, regarded by the Colonel as his chief medical adviser, was

always consulted in regard to the movements of the Colonel. Dr. Buie's advice and wishes largely guided the other doctors at Miami Beach. In his last move, 1936, the Colonel expressed the preference for Marlin, but he stated in substance that his experience there the year before led him to doubt the wisdom of it. He had expressed the same preference in 1935 and in fact did go to Texas that year.

Doubtless the Respondents will make common cause for the claim of abandonment of the Texas domicile. It is necessary that that domicile be gotten out of the way before any of respondent States would have even a semblance of claim for domicile. Then they will fall out among themselves. Severally they will contend for domicile at death; each with as much show of reason as any of the others, but leading to irreconcilable conflicts and confusion. We shall see New York claiming domicile from 1911 to the date of the Colonel's death; Massachusetts from about 1921; and Florida from about 1925. In this highly interesting situation, we can appreciate the difficulties which confronted the Master and now confront the Court.

When the Court comes to make the final findings and conclusions, and faces the anomalous and ambiguous situation presented by Colonel Green's use and occupation of so many houses, hotel apartments, and vessels, after leaving Texas in 1911, it will feel tempted, as we have been (corrupting Shakespeare somewhat), to exclaim:

"A plague on all your houses—and boats."

or it is certain that while all these abodes—the 90th St. use, the suite at the Waldorf-Astoria, the Sherry-Nether- nd apartments, the main houses at Round Hills and Star and, the yacht "United States," the numerous houseboats l other vessels—were potentially capable of being made o "homes" and dedicated to such uses, no one of them

was ever actually so. They were, so to speak, just landing places in the Colonel's flight of 25 years to "Journey's End." For truly he was in flight after leaving Texas. He never seemed to be "able to light," as one witness expressed it. That the end came at Lake Placid, rather than in the beloved Texas, was merely fortuitous—the decision of the doctors rather than that of Colonel Green.

In this state of indecision and uncertainty the Court will perceive the necessity of the nicest discrimination, if the riddle is to be solved upon any other hypothesis than the continuance and retention of the Texas domicile. It will be impressed, we are sure, with the wisdom of the old maxim:

> "It is not so much to know the facts as to know the significance of the facts."

It may be reasonably anticipated, we think, that great stress will be laid upon the size and the immense outlays made upon both the Round Hills estate and the house and grounds at Star Island. It may not be denied that millions were spent at Round Hills and vast sums at Star Island. But we must not be awed by the vastness and the lavish wealth expended upon either place. It was but the case of a very rich man spending his millions in a ceaseless quest for health. Peace and rest were impossible. There was left to him only one course: to "follow the sun," as he once graphically expressed it. His abodes in Massachusetts and Florida were intended for seasonal occupation only; sojourning places, so to speak. Neither was any more a home, in the true sense, than was any of his several New York places of residence. The relative size and amount of expenditures could have no legal significance except in a contest between the respondent States, and upon the assumption that the Texas domicile had been abandoned and a new domicile acquired elsewhere.

If reincarnation were possible and the Colonel might reappear in the flesh and take the witness stand, we fancy his saying:

"My home, my domicile? Why, it is and always has been in Texas. For nearly twenty years, beginning in my early manhood, I resided and did business there and lived my life there. I made Texas my first home of choice and I have never had any other. I have had many houses, many boats, but only one home. My heart was in Texas, and I never took it away. I died at Lake Placid and was buried at Bellows Falls, but my heart was buried in Texas. They have a saying down there: 'once a Texan, always a Texan.' I lived and I died true to that tradition."

This imaginary, but not apocryphal, statement is not entirely fanciful in the light of the whole record. We believe the Court will be impressed with its substance.

In connection with such argument we refer the Court to the Appendix to our Requested Findings of Fact, addressed to the Master, for a rather concise but complete summary of Green's life and activities, pages 39-78.

We have renewed the argument made before the Master primarily because it presents a fair outline of the Texas view; and is based upon facts found by the Master or contained in the "Digest." There is the further purpose of showing, by the facts recited and emphasized therein, the lack of substance in the contention pressed upon the Master by counsel for other States, to the effect that Green's early history furnishes nothing more than a mere historical background. While the Master seemingly has not predicated his final conclusion upon that basis, he appears to have seriously entertained it and has stated that it leads to the same conclusion. The argument is thought to refute completely that narrow view. In consideration of the adverse report of the

Master, and the exceptions and objections we have lodged, the need for some elaboration, at least, is apparent.

It might simplify matters for the Court if, at this juncture, we attempt to make the Texas position plain, and to make certain concessions. Complainant's whole case may be said to be as follows: That Green firmly fixed and established a domicile of choice in Texas, between and during the years 1892 to 1911; that he never abandoned that home in intention, at least; that such domicile is presumed in law to have continued, until abandoned and a new domicile acquired elsewhere, in both fact and intention; that the burden of proof is upon Respondents, respectively, to overcome that presumption by clear and satisfactory proof; that in addition to the presumption of law there is an impressive array of facts, amounting to a preponderance, in the record, supporting the presumption; that Green never established his true home in any other State; that Green's domicile in Texas persisted and continued to the time of his death, and that Green died domiciled in Texas. Complainant relies, in the face of the fact of residence and physical presence in other states, upon the principle that both fact and intention must concur for the acquisition of a new domicile; but that, on the other hand, intention alone is sufficient to retain and preserve a domicile already acquired.

In the light of the record, we may not deny that, after 1911, Green had no fixed place of residence in Texas, save, perhaps, his private car at Terrell which was not available for his use and was never used by him after 1928. It must be conceded, too, that after 1911 Green had dwelling places or residences in all three of the respondent States; which he occupied for long periods of time, at least a part of each year. We have at all times conceded that all those residences, even the grandiose, gargantuan mansion at Round

Hills, Massachusetts, with all its distractions, were potentially homes; but we have denied that any one of them was actually a home, in the true and legal sense. The concession applies to the hotel apartments of Green in New York, of course; for a man, if he chooses, may make his home in a hotel or a tent or a boiler factory. While conceding residence and physical presence in the other States, our insistence is that each and all of the residences and dwelling places in the other States failed to become homes, for lack of the vital element of intention.

There is no question of re-acquisition. Complainant simply relies upon the continuance and retention of the Texas home and domicile of Green, by his continuous, unbroken intention, conclusively manifested over a period of twenty-five years, after he took up his abode in New York.

In discussing and applying our exceptions, we shall not consider them seriatim, but in such order as we think will best illustrate our contentions and by subjects rather than by specific reference to numbers. In some instances, however, they will be grouped, where closely related. Some will not be discussed at all. There is no intention, however, to waive any of them, whether discussed or not.

We have complained of the failure of the Master to make an express finding that Green had fixed and established his domicile in Texas during the period of the years 1892 to 1911. Perhaps we should not argue the point because an implied finding to this effect has been made, and it may have been the intention of the Master to make the finding we requested. In his statements, pages 51, 52 of the Report, containing the conclusions of abandonment of the Texas domicile, it is implicit that Green had fixed a domicile of choice in Texas, during that period, and perhaps until 1921. There could be no abandonment of a domicile

unless one had been previously acquired. At all events, the facts found by the Master, in this relation, conclusively show that Green was domiciled in Texas from 1892 until 1911. Furthermore, we apprehend that counsel for none of the respondent States or Mrs. Wilks will seriously contend that Texas was not the domicile of Green during the period under discussion. It may be too much to expect an express admission, but the evidence is overwhelming and we do not feel justified in laboring the point further. We, therefore, now address our argument to the later periods.

If Green actually abandoned his domicile of choice in Texas in 1911, when he moved his place of residence to New York, disposed of his Texas residence and moved his furniture and household effects to the West Ninetieth Street place and began living there with Miss Harlow, as found by the Master, the new domicile so acquired must have been in New York; otherwise there would be a hiatus in domicile, between the years 1911 and 1921. This, of course, is obviously impossible. A man must have a domicile at all times, and but one at a time. The undisputed evidence is that Green had no abode save in New York, from 1911 to 1921. Frankly, we have been surprised at the manner in which the Master has disposed of the claims of New York for domicile. We had expected that if he should find abandonment of the Texas domicile, it would be upon the theory of the acquisition of a new domicile in the State of New York; continuing until, at least, the completion and occupancy of the house at Round Hills, Massachusetts. We quite agree, however, with the conclusions of the Master that Green never acquired a domicile in New York, because of insufficient evidence to show that he ever intended to make either of his dwelling places in that State his permanent home. He properly applied the criterion of lack

of intention, in the case of New York; but he failed to apply that test, upon similar and undistinguishable indicia and criteria, in the case of Massachusetts and Florida. The Master, by his process of reasoning, has neatly disposed of New York and has virtually "skipped" that State; notwithstanding his long years of residence there and his physical presence within the State during the years 1911 to 1921, and after years. The device is easier than to conclude a New York domicile, later abandoned in favor of Massachusetts; but it is a surprising quirk. We are not complaining, it is to be remembered, that the Master did not find in favor of New York. But, for our purposes, we think we are entitled to an unequivocal finding that the preponderance of the evidence (and the legal presumption as well) show a continuance of the Texas domicile until 1921, at least. We expect to show that it continued to the date of Green's death.

In trying to account for the Master's singular treatment of the claims of New York, we have thought that perhaps he proceeded upon the theory that, on the whole case, Massachusetts was the domicile of Green; that Florida was the only other State that could claim domicile at death because of his residence there; that he could dispose of Texas through abandonment, and New York through the impermanence of Green's intention to make his home in that State; and then could eliminate Florida, upon the principle, sometimes applied, that the Star Island house and estate was a secondary and subordinate home. If that was the Master's formula, it is untenable, because, in effect, he has made the choice of domicile, rather than the decedent. But this is conjecture, and we must leave it to the Court to find the explanation.

The Master has found an actual abandonment of the Texas domicile, but he seems to have been uncertain when the abandonment actually occurred. In fairness, we must say that he has indicated that it occurred in 1921, when he acquired a new home in Massachusetts; but he does not say so. Our exceptions challenge his conclusions on this point. The facts upon which the Master chiefly made his deduction are the following: That after 1911, Green had no residence or actual abode in the State of Texas; that he sold his Texas residence and disposed of his main business interests there; that he moved his furniture, household effects and automobile to New York and installed them in the West Ninetieth Street house, and immediately set up his establishment there; that after 1921 his visits to Texas diminished and finally ceased; that when freed from all restraints, he failed to again acquire a residence in Texas; that Green acquired a new home in Massachusetts; that Green's many declarations that his home and legal residence was in Texas were self serving and made with the intention to deceive, and for the purpose of escaping taxation in each of the respondent States; that all such declarations must be disregarded, because of something fictitious or sinister about them all. These are the main considerations upon which he based his conclusions of abandonment; the others are of slight importance. Some of these facts are undisputed. We wish to consider here those only which relate to Green's lack of a residence in Texas, his declarations, and the significance and effect of the abode in Massachusetts. We respectfully insist that the deductions of abandonment and acquisition of a new domicile are without support in the evidence.

As to the matter of the lack of a place of residence or a fixed abode in Texas, after 1911, it is not conclusive, although it may have some legal significance. We have cited author-

ity for the proposition that a house or place of residence may be burned or sold, and domicile may still continue. If the requisite intent to retain the old home exists, it is immaterial that there is no actual dwelling place.

For Green to have built or acquired a new residence in Texas would have had no greater legal significance, in the circumstances of this case, than were the abodes in Massachusetts and Florida. It would have been just another seasonal dwelling place; seldom occupied because of the desperate condition of his health and the constant need for change of scene. Consideration of health and enforced travel fully account for the failure of Green to acquire anew a Texas residence, after 1921; as business considerations account for such failure from 1911 to 1921.

As to the Master's conclusion that Green's declarations were fictional and dishonest, we emphatically insist that there is no basis, in all the evidence of the record, for the conclusion. True, Green probably had distinct advantages, as he thought, in retaining his domicile in Texas; and especially the avoidance of taxes more burdensome in other States. The motive may be conceded to be selfish, but it was not the only one, and it is a form of selfishness not uncommon. Many good citizens are afflicted with it. The phenomenon is to be found in high places and in low. His motives in this respect, as in the matter of voting and exercising the rights of citizenship, are without legal significance and are wholly immaterial, provided they were honest. It is the law of every jurisdiction here concerned that motives are immaterial, if genuine and bona fide; and we have cited above ample authority for the proposition. From Massachusetts, we have cited and emphasized the case of *McConnell* v. *Kelley*, 138 Mass. 372, in which the sole or controlling motive for a change of domicile was to secure the advantages of more favorable insolvent debtor's laws.

We would have scant respect for any authority holding that mere selfishness of motive deprives a person of the right to choose his own domicile. We doubt that any such case, properly analyzed, can be found. The selection of many, perhaps most, domiciles is motivated by selfish reasons, in one form or another. Moralists may condemn them, but judges are not concerned with the selfishness of motives in the choice of a domicile. They are immaterial, in the legal sense. The right of selection is absolute in every person *sui juris;* and motives may not be examined judicially except for honesty and reality.

As to Green's long absence from Texas, it is, of course, not to be denied that physical presence and continuous living at an old home is not required, if the intent to retain it is shown or as long as it is presumed. Nor does absence from an established domicile, no matter how prolonged, alone work a change of domicile. A temporary residence elsewhere for the purpose of health, travel or business does not change the domicile. The fair conclusion, upon the whole record, is that Green's absence from the State of Texas in his later years, while concededly long, was temporary and fully accounted for by the considerations just mentioned. We would not be justified in arguing the point further.

In this same relation, the Master seems to have conceived the notion that the whole mass of declaratory evidence in favor of Texas may be disregarded and nullified, upon the theory that Green's declarations were fraudulent and deceptive. (R. 52.) How he got the theory we do not know. Certainly not from the evidence, for it does not support his deductions. It is a bald conclusion, without basis. There is no evidence justifying this wholesale imputation of fraud and dishonesty. Green's frequent and repeated

declarations that he was a citizen of Texas and that his legal residence was there bear the stamp of honest, sincere belief; and many of them an evident spontaneity and lack of ulterior motive. There is not a scintilla of evidence in the record that impeaches his sincerity. Take the instance of his letter to the Texas Centennial officials, so soon before his death, to which we have adverted. Can anyone doubt the honesty of that letter, and Green's belief that he was still a citizen of Texas and that his legal residence was in that State? Suppose he was mistaken, and that all his efforts to preserve his Texas domicile were futile? Is that any impeachment of his good faith and honesty?

The Master has stressed Green's statements to the taxing officials of New York, Massachusetts and Florida, as examples of misrepresentation and deceit. Neither the evidence nor the Master's findings on the facts and circumstances of those transactions support the deduction of fraud. Green made no representation of fact concerning a residence or place of abode in Texas. He made no such claim. He simply claimed that he was not a resident or citizen of either of those States, taxable as such, but that his legal residence was in Texas and that he was a citizen of that State. It is not to be argued that the officials were ignorant of the fact that Green had places of residence in their States; but that was not enough to tax him as a resident. If Green was legally a resident of Texas, he was not taxable as a resident of the other States. It was a question of jurisdiction solely. That was all that was at issue. Green convinced them all; but he never represented to any of them that he then had a residence or dwelling place in Texas, expressly or by implication. Furthermore, it is to be presumed that those officials discharged their duty to fully investigate, and all means were open. Their conclusion that Green was not taxable as a resident of their jurisdictions,

based upon no misrepresentation of fact, is a vindication rather than an impeachment of his position. It seems almost fantastic to impute fraud in such circumstances. It is a singular perversion of the obvious significance of the facts. We should not speak so plainly, if the point were not so important and the deductions so mischievous in their consequences. They have palpably colored and influenced the whole of the Master's findings on abandonment. We must be forthright.

Another point, comprehended in our exceptions, is the complaint over the Master's findings concerning Green's tastes and conceptions of home and domicile. (R. 53.) Properly speaking, the objectionable paragraph is a mixture of findings, arguments and conclusions. We reply, in the first place, that Green's abstract notions and legal concepts have nothing whatever to do with the case. The evidence reflects that his purpose to retain the old domicile and to refuse the acquisition of a new one, to be inferred from both conduct and declarations, was a very practical, concrete thing. He very well knew the meaning of "home," "legal residence," and "domicile," both lay and legal. To him they were equivalents. His able and astute counsel, Mr. Pierson, had seen to that. The question of domicile and change of domicile arose with Pierson more than once. The correspondence shows that Green was fully advised on all the elements of domicile and change; and that Pierson always stressed the vital part that intention plays in both. It is a little ironical that the discussions always related to a possible change of residence from Texas to Florida, and not to Massachusetts. Green was not without a measure of intelligence; and it is rather far-fetched to say that he refused the advice he had sought and formed his own notions of domicile and change of domicile, variant from those of

is trusted counsellor. Be that as it may, the conclusions re mere speculations and are not to be inferred from any acts of record.

As a base for further conclusions, the Master has conceived that "He (Green) was nomadic in his tastes and evidently regarded domicile as something distinct and apart from home or residence." More speculation? Where, in the acts, is there any proof that Green was a nomad? After all, if he was migratory, it was not from any "nomadic tastes"; but his frequent movements were those of a tortured, stricken man, seeking health and peace. What a strange place to find it at Round Hills, with its raucous and maddening mazes and bewilderments! But there is where the Master has assigned him a domicile; and at a place only "seasonally occupied," at that. Plainly Green's abnormal movements, if any, arose not from taste or inclination but from unarguable necessity.

There is even less evidence for the Master's assumption that Green was confused as to the meaning of *home* and *domicile;* that he thought they were entirely different things. Aside from Pierson's careful advice on the subject, it is reasonable to conclude that Green's life experience, and his common sense as well, told him that there was no difference in the meaning of the terms. "Legal residence," the expression he used most, was to him the place where he had made his first and only home, and it was always regarded by him as his domicile. If, as the Court has said, to him (Green) *domicile* was a mental state where he could obtain certain political advantages and freedom from taxation," Green was not far wrong at that. We have seen that motives, if real, are wholly immaterial. As to mental state, what is intention but a mental state? Where, as here, domicile is sought to be retained by intention alone, what

is involved but a state of mind, a condition or an attitude? The whole thing seems to be without point. Without further discussion, we submit that there is no evidence of the peculiar notions the Master has imputed to Green, and besides they are without legal significance. The inferences are all without substance.

Before we leave this point, let us briefly consider a circumstance to which the Master seems to have attached great importance, viz.: the statement by Green to his attorney, in 1931, "that he had no sentiment where his legal residence might be." The Master has taken the incident too literally. The statement on its face appears contrary to the mass of evidence showing that Green did have the deepest sentiment and affection for Texas, his legal residence. But when the circumstances under which it was made are considered, it loses all significance. It was made when Green was advised that an income tax in Texas was imminent. That to Green was a real menace. We may concede that it was even a strain upon his allegiance. We concede that he probably meant this and nothing more: When it comes to taxes sentiment must take second place and perhaps, give way. Even Texas could go too far! But when the threat passed, we hear no more of a change of domicile. If he wavered on that one occasion, Green was never moved finally to abandon his beloved Texas. The fact did not justify the Master in treating it as an impeachement of Green's sincerity, and in giving it the weight he has done.

The Master (R. 28) has conceded that "if mental state alone, as evidenced by declarations, could establish domicile, Green remained a Texan up to the time of his death." He might well have added that Green's whole course of conduct, aside from physical presence and residence in other states, confirmed his declarations and the intention to be inferred

therefrom. He has found many facts supporting that conclusion.

The Master has given undue weight and prominence to the mere fact of residence and physical presence. This is a case of claimed change of an established domicile, and, while the factors named are admittedly proper subjects of consideration and are important, intention and mental states and attitudes are equally important. Some authorities, indeed, approve the principle that intent is the dominating factor. The Master (perhaps not intending), applied the principle in denying the claims of New York, with its impressive showing of both residence and presence. He should have applied it, likewise, to Massachusetts and Florida; and to a like effect.

This (as to Texas) being a case in which retention of domicile is claimed through intention, the inquiry largely centers in the state of mind and mental attitudes of Green. This is true not only as to his old home in Texas, but equally so as to every one of his abodes in the other States. It must be so, because intention is as necessary to abandonment and acquisition as to retention. If Green's mental attitude toward every one of his abodes and residences in states other than Texas is given its proper significance and weight, will be found to be an insuperable obstacle to the conclusion of abandonment in favor of any other State. That's why we say it is like no other case we have seen. The element of intention is vital, supreme and dominating here; and it should be the determining factor in the case.

The middle of the road approach of the Master, between conflicting theories, has its merit, of course. But it has led to surprising results. It has led to the selection (not determination) of the least appropriate of all Green's abodes. Never happy anywhere the last fifteen years of his

life, Green was most unhappy at Round Hills. While our position, if Texas should lose, is one of "benevolent neutrality," we must say that the hotel apartment at the Sherry-Netherland or the Star Island estate came nearer to being "homes" than austere, bewildering, maddening Round Hills. But we must not lose our balance and go further into comparisons, which are always odious.

We do not exactly follow the individual and independent methods of analysis pursued by the Master, as he indicated he has done. In an effort to be entirely candid, we must confess that the question which has given counsel for Texas their chief concern is the difficulty of pointing to any affirmative evidence that Green, in the later years of his life, retained the intention of returning to Texas to live. There can be little doubt that when he left the State, he expected his absence to be temporary and that he intended to return, no matter how long in the future that might be nor how indefinite the need for his remaining in New York. The same may be said for the next ten years. But what after 1921? When, if ever, did he change his intention? If we are to trust his declarations and his insistences, he never changed it. After 1921, it cannot be fairly claimed that business considerations prevented his return to Texas to live. His business was well in hand, although centered in New York. Its active conduct was in competent hands. What, then, is the answer to the problem?

First, we say that we are dealing with the case of an established domicile; and the law presumes a continuance of the intention to retain and to return. The fact of residence and physical presence in other states is not enough to overcome the legal presumption. There must be a concurrence of both fact and intention to make a new home, in order to acquire a new domicile. The intention must be

fixed and permanent in character. If there is not sufficient evidence to show the intention of making a place a permanent home, as the Master held with respect to New York, no change of domicile is effected. The same holding, we think, should have been made as to the residences both in Florida and Massachusetts. Each of the opposing States has made a formidable showing on the fact of residence, but none has discharged the burden of proving the requisite intention. The facts found by the Master do not warrant the conclusion of abandonment and the acquisition of domicile in Massachusetts; nor would they warrant a conclusion of domicile in either New York or Florida. The lack of intention is fatal to the claims of all.

Complainant, however, does not rely alone upon legal presumption and burdens of proof. The evidence, viewed as a whole, corroborates and supports the presumption. Fairly appraised, it shows that Green's intention to retain Texas as his home persisted to the very end. It is the only view consistent with Green's declarations, which may not be justly discarded because deceptive. By and large, the very facts found by the Master demonstrate the continuous intent of retention, and refute the theory of abandonment. If there should be any revisions by the Court, we have no doubt they will only tend to support our contention.

While business did not keep Green away from Texas during the last fifteen years of his life, we think we may safely say that the state of his health did. His movements and activities during those years are to be accounted for only on the basis of a desperate search for health. Except for treatments at Marlin, Texas apparently was not the place for one in his condition. But he went to Marlin in 1935 and, as we have seen, wished to go there again in 1936. In the circumstances, it was useless to build or take resi-

dence in Texas. Far better that he make Round Hills his summer stopping or sojourning place and Star Island his winter haven, with the New York apartment in between, in the eternal round for health. This, in fact, is what he did, and it was no more the making of either residence a home than was his use, for shorter periods in Spring and Fall, of his New York hotel apartments. That is about all that can be said on the point, without unwarranted reiteration.

The paramount question in the case, from the Texas viewpoint, is, of course, in what place was it the real intention of Green to make his permanent home? This question we have presented, in various forms, by our exceptions to the Master's report. As to the findings and conclusions with relation to the New York and Florida residences we have made few if any, objections. We are content with the facts found and the conclusion that Green did not intend to make either of them his home in the legal sense. The process by which New York was eliminated, through impermanence of intention; and Florida, through the seasonal, subordinate character of the residence there, a mere Winter sojourning place, need not be defended. The important facts have been fully found and they permit of but one conclusion: that Green did not regard either of those places as his home. His heart was not in either of them, nor did he make either his "hearthstone".

Our task is to refute the findings and conclusion of the Master as to the Round Hills residence. We hold no brief for New York or Florida. Those States are ably represented. Their contentions have been and will continue to be presented with skill and ability. But we are still wondering what difference in fixity of purpose, or permanence of intention, or sentimental attachment, led to their re-

jection and to the acceptance of the Round Hills mansion and estate as the permanent and superior home.

The New York abodes, while not as pretentious or expensive as the Massachusetts and Florida residences, were adequate and suited to the purposes and uses of a home. Domestic establishments, suited to Green's needs, were set up in each. He actually lived in them for long periods of time, and retained the Sherry-Netherland apartment to the day of his death. There were plenty of *lares et penates*, of which the Master makes so much, to be found in all the New York residences. What, then, prevented their becoming homes? The answer is: the lack of intention, so vital in the making of a home. The hotel apartment, retained by Green at the time of his death, had become merely a place for seasonal occupation and convenience as distinguished from a residence intended as a home. We shall see that the same situation existed as to both the Florida and Massachusetts abodes.

Star Island was acquired as a seasonal residence, as Green turned, upon the direction of his medical advisors, to the ideal climate of Miami Beach. At great expense, he built his house and made an exotic estate there. The photographs appended to the report reveal something of its charm and its enchantment. Even the Master has not been able to conceal his admiration and, perhaps, a secret yearning for such a home, mosquitoes or no mosquitoes. It seemed ideal for a rich man's home. But, nevertheless, it was just another seasonal residence for Green.

So he had three such places for the seasons: Round Hills for Summer, Star Island for Winter, Sherry-Netherland in between—and he made the round, year by year. With all its beauty and its comforts, the Star Island house and grounds was never a home, in the true sense, despite the Master's finding and classification of it as a subsidiary

one. The real basis of that finding, we submit, is that Green lived in it each year for about ten years, for nearly the same length of time as at Round Hills; but Star Island simply could not be ignored as was New York. A choice had to be made, and the Master selected Round Hills. The facts found by the Master alone refute the process; to say nothing of the other facts contained in his Digest. Star Island, along with the New York hotel apartment, failed for lack of intention.

Coming to the findings for Massachusetts, we shall only refer briefly to certain features and characteristics of the Round Hills estate, found by the Master and shown by the facts of record, which militate against and overcome his conclusions. In the first place, let us remember that there could be no home there, unless Green had abandoned his Texas home and it was superseded by a new home. Remember, too, that the whole inquiry involves a search for the secret of Green's heart—what place, in truth, he regarded as his permanent home.

We shall not take time with relative size and outlays at Round Hills and Star Island. Conceivably, in a contest between Florida and Massachusetts, those factors might have a value; might, indeed, become controlling. We fear the Master has been impressed, perhaps awed, by them to the point of selecting Massachusetts in the first place. Be that as it may, such considerations have no place in a contest between Texas and Massachusetts.

Now let us take a look at Round Hills, as reflected alone by the facts found. At the time of Green's death there were sixty-odd structures on the 270-acre place, ranging from hot dog stands to an aviation field. The many public and semi-public features and projects are sufficiently set out in the Report to determine their significance and their incongruity, in relation to a home for one in Green's state of health.

Detailed recital is unnecessary, but we may mention the refreshment places, the aviation field, the public bathing beaches, radio station, boats and buses for school children, and the old whaler "Charles W. Morgan." All in all we doubt whether such an aggregation of incongruous, curious things were ever before gathered in one place.

Did not Green himself give a reasonable explanation for the creation of this character of place, *viz.*, that it was conceived as a memorial to his mother, Mrs. Hetty Green, with the hope that, using it as a public playground or resort, some of the ill-will and disapproval toward Mrs. Hetty Green existing among the inhabitants of New Bedford and vicinity might be overcome? And was not Green's own attitude and feeling toward this bizarre establishment aptly expressed and reflected when, in his own words, he described it as a mere experimental or scientific proving ground for some of his endeavors?

We are not to be understood as claiming that the strange and raucous bewilderments of Round Hills were legally incompatible with its dedication as a home. But we do say that they were not the usual appurtenances to a home, and not conducive to that peace and rest of which Green was so desperately in need. Perhaps that accounts for the fact that Green spent less than half of each year at the place; even when advised that it made no difference, in the matter of taxing him as a resident, whether he spent more or less than six months annually in Massachusetts. Inferences from established facts and common sense compel the conclusion that Green found it impossible to make such a place as Round Hills his regular establishment, his true and permanent home, even upon the assumption of a desire and intention to abandon Texas.

The Master has found the monumental character, the memorial purpose, the institutional appearance of the Round

Hills mansion. All the findings of its massiveness and solidity, the comforts and the luxury of the interior, the retinue of servants and employes, the boats, everything, cannot obscure those fundamental purposes, at war with the notion of a permanent home. Even the *"lares et penates"* are not important. Green had them everywhere he lived—in Texas, in New York, in Florida, in Massachusetts. They differed only in form and degree. The Master stresses the portraits and the books; but the picture of his mother, Green had always with him. As for the library of rare and costly books, it is doubtful whether that had any real value for Green, except as a collection. Certainly he had no flair for literature and extensive reading, even upon the special subjects largely predominant. Books were books to him and he had them at every place he lived. It is of little importance that the Round Hills collection was larger and more valuable. His tastes were not of a literary or artistic nature and the Master has so found. And so with the other things found in the Master's process of giving them a special value and intimacy of relation to Round Hills as a home. Space will not permit a fuller discussion. But the above considerations will suffice to suggest why we say that Massachusetts has no better claim for domicile than New York or Florida, if as much.

The truth of the matter, as reflected by the record and by the very findings of the Master, is that none of the respondent States has a convincing claim for domicile. They have not proved abandonment of the Texas domicile, in fact and intention; they have not proved the acquisition of a new home, in the legal sense. Nothing less will suffice. They have discharged the onerous burden that is upon them, only to the extent of showing, at most, a state of ambiguity. The law requires more than that. In such a condition, the established domicile remains—in Texas.

At the risk of repetition, we recapitulate certain important considerations in behalf of Texas: Green's absence from Texas is explained by his business interests and his health. Neither respondents nor the Master have advanced a sound reason for dismissing as insincere and dishonest an unvaried and unbroken course of conduct extending over a period of a quarter of a century and evidenced by actions as well as hundreds of oral and written declarations, showing conclusively that Green's heart was in Texas. There is no sound reason for concluding that Green was dishonest in claiming Texas as his home, and that he was merely trying to escape taxes. There was far more than that. The deepest sentiments of his heart were at bottom in the claim, and they explain the consistency of his attitude. But motives of that character, even if true, are unimportant. If he traveled much, the law accords as much, and it is to be expected of a very rich man. The fact that he maintained no house in Texas is without importance. We speak of importance in the legal sense. The important point is that Green regarded Texas, in a real sense and within the meaning of the authorities, as the place of his home.

We have requested the Court to adopt the findings which the Master refused, when presented to him in our memorandum. Our Bill of Exceptions sets them out again, pp. 35-44. Conceiving that they are clearly supported on the record, and the legal conclusions to be sound, we renew the request. Each, in effect, has been argued herein.

A brief paragraph to cover a certain point within our exceptions may be here inserted, in order to dispel a possible misconception. The Master has somehow conceived the notion that the Texas case has been made to depend upon the local law of that State. We had endeavored, in our memorandum, to make it plain that there was no Texas statute of general application defining or determining domi-

cile or relating to the domiciliary issues of this case. The legal principles and rules of domicile recognized by the courts of Texas are a part of the general or common law of the United States; and are, in all essentials, the same as those prevailing in the other jurisdictions here concerned. We rely upon no "local" law, but upon the law common to all the States. Applicability of the various principles invoked by the respective parties is about the only difference between us, as far as the law is concerned.

We conclude this brief, already extended beyond our intention, by borrowing an example from contemporary American history. We have spoken of this as a strange case, and surely it is. But no more strange than the case of a great and world known citizen of the United States and of Texas: the late Colonel E. M. House, of Austin. Despite a prolonged absence and residence away from his home and domicile of choice, for more than two decades, there is hardly a schoolboy or girl who does not know where the "home" of House was. The recent offer for probate of the will of Colonel House at Austin, Texas, suggested his example.

For nearly a quarter of a century, House was almost continuously away from Austin with his family. He resided variously at hotels in Washington, New York and Paris; and was about as well known in the Capital and in New York as in Austin. After the war he lived in his beautiful residence in Massachusetts; and, as we remember, died there. He had long since sold his noted home at Austin, and was not physically present in the State of Texas for long years before his death. Yet he always voted in Texas, publicly declared he was a citizen of Texas and his intention of retaining his home in Texas. The world and all concerned recognize that State as his home, therefore his

domicile, at death. It was the intention, as here, that preserved the old domicile, in the face of contrary factual appearances.

It may be stretching a bit, perhaps, the rule of judicial knowledge, to ask the Court to take cognizance of these widely known facts. We hope not, because they present such a striking instance of the tenacity with which men often hold on to the old, and refuse to exchange for the new, in matters of domicile. If the analogy must fail, because outside of the record, although the facts are commonly known, we shall be deprived of a very illuminating example.

Our final word: Intention dominates this case. The facts and the law are with Texas.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1938

No. 11 Original

THE STATE OF TEXAS, *Complainant*,

-vs-

THE STATE OF FLORIDA, et als., *Respondents*.

BRIEF FOR THE DEFENDANT, THE STATE OF FLORIDA, IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

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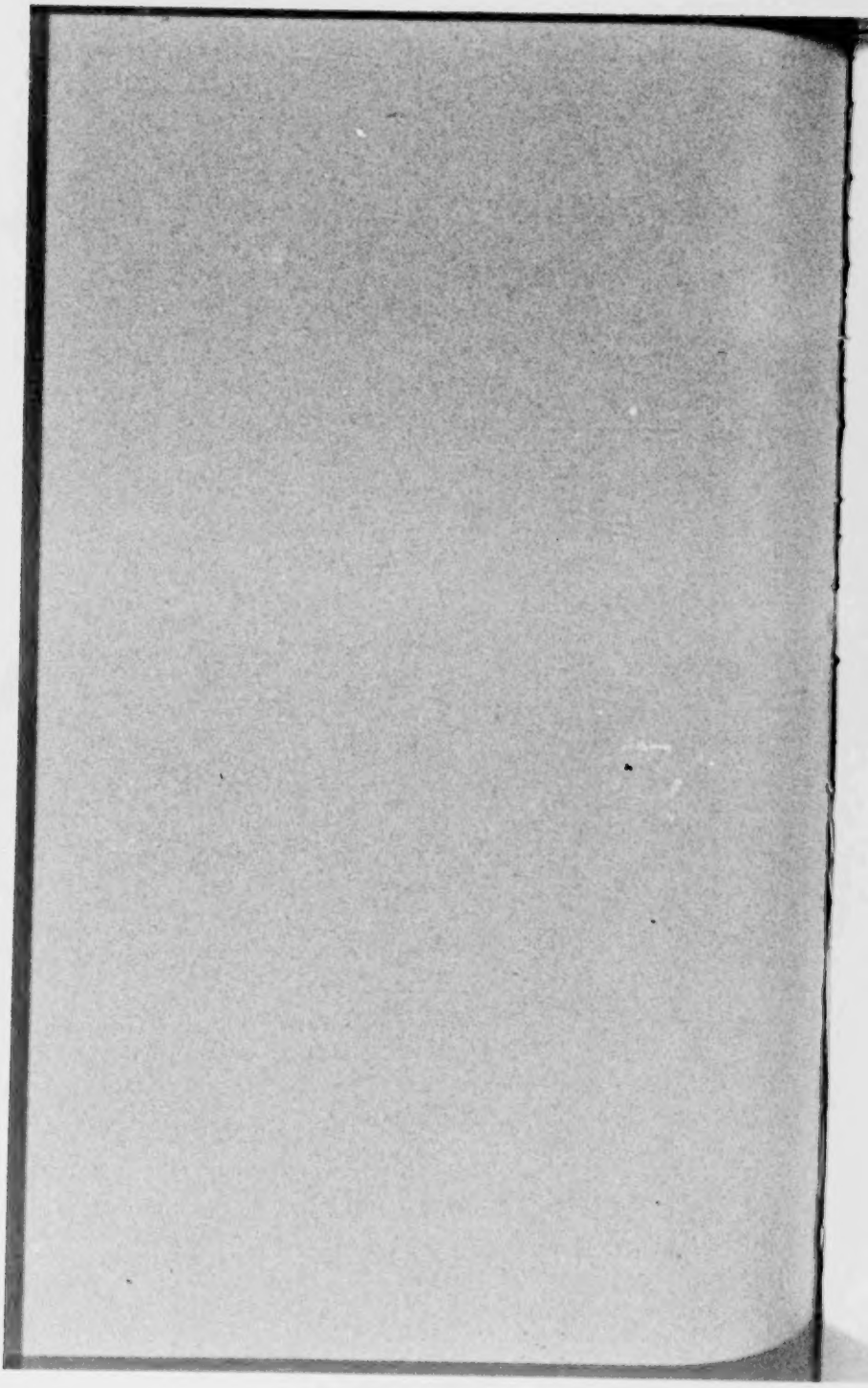

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BRIEF FOR THE DEFENDANT, THE STATE OF FLORIDA, IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

STATEMENT.

On March 12, A. D. 1937, the complainant, the State of Texas, presented to this Court its motion for leave to file its bill of complaint against the State of Florida, the Commonwealth of Massachusetts, the State of New York, Mabel Harlow Green, and Hetty Sylvia Ann Howland Green Wilks, and tendered therewith its proposed bill of complaint. The right to invoke the original jur-

isdiction of this Court in this cause was claimed under the provision of Article III, Section 2, Clause 2, of the Constitution of the United States.

On March 15, 1937, this Court entered its order in this cause, granting the said motion and allowing the filing of the said bill of complaint, whereupon process issued to the several defendants, commanding them to appear before this Court on Monday, May 17, 1937, to answer unto the bill of complaint exhibited against them by the complainant. Thereafter, in due course the defendants filed their several answers herein.

THE PLEADINGS

The bill alleges:

(a) That the complainant and defendant States are States of the United States of America, and the defendants, Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks, are citizens of the United States of America, and of the State of New York, and inhabitants of the Southern District of New York.

(b) That this is a case or controversy of a civil nature between two or more States of the United States and between a State and citizens of another State, and therefore within the original jurisdiction of this Court.

(c) That the complainant and each of the defendant States and the United States of America prior to June, 1936, had passed and there were in effect therein laws imposing a transfer, succession, estate, or inheritance tax upon the right of succession or inheritance, giving reference to the said laws and the rate of the tax so imposed.

(d) That Edward Howland Robinson Green died on June 8, 1936, in Essex County, New York, where he was then temporarily sojourning; that the said Edward Howland Robinson Green at the time of his death was possessed of property of very great value, estimated at approximately $44,348,500.00, all of which was located outside of the State of Texas except a small amount of unimproved real estate of the estimated value of $6,000.00.

(e) That the domicil of the decedent, Edward Howland Robinson Green, at the time of his death on June 8, 1936, was in the City of Terrell in the County of Kaufman and the State of Texas, and that each of the defendant States likewise claimed his domicil at the time of his death, and that each said State claims the right to collect from the estate of said Edward Howland Robinson Green the transfer, succession, estate or inheritance tax imposed by its laws as the domiciliary State of said decedent Green.

(f) It is alleged that if each of the defendant States should collect the tax claimed in addition to the Federal tax, the remaining assets of said estate would be insufficient to satisfy the complainant's claim for transfer, succession, estate or inheritance taxes.

Much of the matter alleged in the bill of complaint is admitted by the several answers herein, but each defendant State denies that Edward Howland Robinson Green at the time of his death was domiciled in the State of Texas, and denies that he was domiciled in either of the other defendant States, and by way of counter-claim each defendant State alleges that the decedent Edward Howland Robinson Green was at the time

of his death and had been continuously for a long time prior thereto, domiciled within the particular State making said counter-claim.

The State of Florida in its answer by way of counter-claim alleges that the decedent Edward Howland Robinson Green was at the time of his death, and had been continuously for a long time prior thereto, domiciled within the State of Florida in the City of Miami Beach in Dade County, and that under authority of Chapter 16015, Laws of Florida, Acts of 1933, it is entitled to levy and collect an estate or inheritance tax upon the transfer by inheritance, descent, devise, succession or bequest of the estate of said Edward Howland Robinson Green, computed upon the net value of all the real property and tangible personal property of said estate situated in the State of Florida, and upon all the intangible personal property of said estate wherever situate, fixed at eighty per cent of the estate taxes imposed by the United States of America under the Revenue Act of 1926.

THE ISSUES

The pleadings present two main questions:

First, jurisdiction;

Second, the domicil of Edward Howland Robinson Green at the time of his death.

APPOINTMENT AND REPORT OF SPECIAL MASTER.

On June 1, 1937, an order was entered herein, appointing the Honorable John S. Flannery of Washington, D. C., Special Master in this cause, with authority

to summon witnesses, issue subpoenas, and take such testimony as might be introduced and such as he might deem is necessary to call for, and he was directed to make findings of fact and conclusions of law and submit the same to this Court, together with his recommendations for a decree. It was therein ordered that the findings, conclusions and recommendations of the Master shall be subject to consideration, revision or approval by the Court. Pursuant to said Order the said Master proceeded to take the testimony introduced before him in said cause, and did make and submit to the Court his findings of fact and conclusions of law, together with his recommendation for a decree, in which he found that the domicil of Edward Howland Robinson Green at the time of his death June 8, 1938, in fact and in law was in the Commonwealth of Massachusetts. This Report was received by the Court on November 7, 1938, and it was thereupon ordered that exceptions to the same, if any, be filed on or before December 12, 1938. The defendant, the State of Florida, filed with the Clerk its exceptions to the Master's Report on December 9, 1938.

ARGUMENT

Point One

JURISDICTION

The Master found that this cause presents an actual justiciable controversy of a civil nature between the complainant, the State of Texas, and the defendants, the State of Florida, the State of New York, and the Commonwealth of Massachusetts, of which this Court has exclusive original jurisdiction. It seems to us that no

argument is required to demonstrate that this finding is fully sustained in fact and in law.

Point Two

FACTS WHICH SUSTAIN FLORIDA'S EXCEPTIONS TO THE MASTER'S REPORT AND ESTABLISH GREEN'S DOMICIL IN FLORIDA JUNE 8, 1936.

Florida's exceptions to the Master's Report will for convenience be repeated here and argued in their numerical order.

EXCEPTION I.

> "This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report as follows:
>
> 'He joined clubs, societies and social organizations in every community where he dwelt, but never attended them.'
>
> because the said statement and finding standing alone does not inform the Court of the decline of Green's interest in clubs, societies, and social organizations in Massachusetts and his continued interest in such clubs, societies, and social organizations in Florida until his death."

It is true as found by the Master that Green joined clubs, societies and social organizations in every community where he lived, but if Green at the time he died

had two homes as the Master found on page 57 of his Report, one at Round Hills in Massachusetts, and one on Star Island, Miami Beach, Florida, and if his domicil is to be determined by which was his principal home, and if his principal home is to be determined by his habits of life and his interest in the one over the other, and if his interest is to be judged to any extent by his activities, civic, social and domestic, then it is important that the Court be informed of the rise and fall of his interest in clubs, societies and social organizations in the communities of said homes where such is the fact established by the record.

When Green went to Texas and sought to establish himself there, he joined various clubs and organizations. He founded a fishing club (D. 4, R. 61), organized a dramatic club (D. 11, R. 263), a baseball league (D. 26, R. 619), helped organize and became a member of an automobile club (D. 50, R. 1067), and otherwise became interested in and affiliated with the community life there.

Later when he moved to New York he joined various clubs there, including the Columbia Yacht Club in 1911 (N. Y. Ex. 50, D. 133, R. 3271), the Atlantic Yacht Club in 1912 (N. Y. Ex. 52, D. 134, R. 3276), the New York Chamber of Commerce (N. Y. Ex. 44, D. 133, R. 3250). He became a member of the Union Club prior to 1914 (D. 133, R. 3258-9). He became a member of the New York Athletic Club in 1912 (N. Y. Ex. 47, D. 133, R. 3262). He became a member of the Metropolitan Museum of Art in 1914 and was elected to life membership in 1918 (N. Y. Ex. 51, D. 133, R. 3275). He became a member in 1917 of the American Museum of Natural History (N. Y. Ex. 37, D. 128, R. 3210), the Aero Club of America in 1917 (N. Y. Exs. 78, 79, D. 137, R. 3357-9),

the Collectors Club in 1918 (N. Y. Ex. 27, D. 126, R. 3173). He became a member of the New York Microscopical Society in 1921 (N. Y. Ex. 12, D. 118, R. 3031-2, 3035). He was a member of the Association for Stamp Exhibitors, Inc., of New York City in 1925 (N. Y. Ex. 61, D. 134, R. 3298-3300). He was a member of the American Philatelic Society with its headquarters in New York City (D. 128, R. 3215). He joined the International Chamber of Commerce in 1925 (N. Y. Exs. 44, 45, D. 132-3, R. 3250-2). There is no evidence in the Record that he joined any clubs in New York after 1925, except the Lake Placid Club of Lake Placid, New York (N. Y. Exs. 57-59, D. 134, R. 3290, 3294).

After he built the Round Hills house and began to spend a substantial part of his time there, he joined a number of organizations, including the Sons of the American Revolution in 1924 (Mass. Exs. 367-368, D. 292-299-302, R. 6222 to 6229), the Society of Colonial Wars in 1925 (Mass. Ex. 369, D. 292-300-302, R. 6229). He became a life member of the Massachusetts Horticultural Society in 1925 (Mass. Ex. 370, D. 292, R. 6236), and a life member of the New Bedford Port Society for the Moral Improvement of Seamen (Mass. Ex. 229, D. 281, R. 6095). He was a member of the New Bedford Yacht Club as late as 1931 (Mass. Ex. 230, D. 281, R. 6096). He early became a member of the Wamsutta Club and the New Bedford Country Club (D. 329, R. 7032), but resigned from both these organizations in 1932 (Fla. Exs. 23 and 24, D. 257, R. 5647). There is no evidence in the record to show that he joined any Massachusetts organizations after 1928.

Green's interest in the community life in Florida began during the development of his home on Star Island,

and thence continued in marked contrast to the decline of his community interest in Massachusetts. He joined clubs and organizations representing practically every phase of community life in and about Miami Beach and Miami, Florida. He became a member of the Miami Beach Chamber of Commerce in 1926, and contributed $1000 thereto each year thereafter until his death, and in addition made special contributions to advertise Miami Beach and vicinity. (D. 363, R. 8549). He became a member of the Waterways Highway Association of Florida in 1927 (Fla. Exs. 266-267, D. 383; R. 9104, 9107). He became a member of the Committee of One Hundred, a Miami Beach organization for political and civic purposes (D. 361, R. 8484). He became a member of the Coco-Lobo-Cay Club in 1927 (Fla. Ex. 234, D. 381, R. 8995), and showed his interest by purchasing ten shares of the stock of said club of the par value of $100 per share (Fla. Ex. 235, D. 381, R. 8998), and again in 1931 by putting up $4000.00 for founder membership in said club (Fla. Exs. 236-239, D. 381, R. 9001 to 9006). He was elected to membership in the Miami Anglers Club in 1928, and that year contributed $1000 to the organization to be used toward the purchase of the mortgage on the club property (Fla. Exs. 229-230a, D. 380, R. 8986 to 8988). He became a sustaining member of the Dade County Council, Boy Scouts of America, State of Florida, in 1929, and his interest therein continued (Fla. Ex. 233, D. 381, R. 8993).

He became a member of several social clubs, including the Bath Club (Fla. Exs. 153-157, D. 364, R. 8580-9), and displayed his interest in said club by reserving a cabana for several seasons and insisting that it be near the driveway and of easy access to his car (Fla. Exs.

154, 155 and 156, D. 364, R. 8582, et seq.). He actually attended this club as shown by a photograph that came from the Round Hills House at South Dartmouth, Massachusetts (Fla. Ex. 151, D. 363, R. 8577). He became a member of the Surf Club and put $3000 in same in 1930, and in 1935 certificate for ten shares of stock in the Surf Hotel Corporation was issued to him in connection therewith (Fla. Exs. 262-265, D. 383, R. 9092-9102). He became a member of the Little Theatre of Miami Beach (Fla. Ex. 256, D. 383, R. 9708), and in 1933 became a member of the Artists and Writers Club, and in 1934 a life member of that organization (Fla. Exs. 231 and 232, D. 380, R. 8990-8991). In 1933 he became a life member in the Greater Miami Beach Athletic Club (Fla. Ex. 254, D. 383, R. 9075). He was a member in good standing of the Florida Outboard Motor Association in 1932 (Fla. Ex. 250, D. 383, R. 9068). He became a member of the Miami Beach Rod and Reel Club in 1932, and in 1935 subscribed to a fund to help liquidate the mortgage on same, and acquired a certificate of ownership of 1/400 of the Club's assets (Fla. Exs. 257, 258 and 259, D. 383, R. 9079 et seq.). He became a member of the Dade County Tax Relief Association in 1932 and paid for 100 memberships therein (Fla. Ex. 240, D. 383, R. 9048). He became a subscriber to the Hialeah Club for the 1935 season (Fla. Ex. 255, R. 9077). He was an honorary life member of the Southeastern Florida Yacht Club of Palm Beach (Fla. Ex. 261, D. 383, R. 9088), and a member of the Biscayne Bay Yacht Club (R. 9110). He became a member of the Florida Peace Officers Association in 1933 (Fla. Ex. 251, D. 383, R. 9069), and an honorary member in 1934 (Fla. Ex. 253a, D. 383, R. 9074), and supported the work of that

organization in behalf of the underprivileged youth of Florida (Fla. Exs. 251-253, D. 383, R. 9074).

Thus it is seen that while Green's interest declined and his membership voluntarily ceased in clubs, societies and social organizations, particularly in Massachusetts, his membership in like clubs, societies and social organizations in Florida continued. His resignation from the Wamsutta Club and the New Bedford Country Club in 1932 was said to wind up his membership in such clubs in Massachusetts, and the record discloses that after that year he became a member of at least eight additional organizations within the State of Florida. In Kennan on Residence and Domicile, Section 108, page 220, it is stated:

> "The fact that one becomes associated with churches, clubs, fraternal organizations, etc., greatly strengthens the presumption that he intends to acquire a domicile in the new location, and is one of the criteria often referred to in a discussion of the subject."

We therefore deem it important to call to the Court's attention those facts established by the record, and not disclosed by the Master's Report, that while Green's interest in clubs, societies and organizations declined in other places, particularly in Massachusetts, the evidence not only fails to disclose a diminution in such community interest in Florida, but on the contrary affirmatively shows that such interest in Florida continued to the very last.

EXCEPTION II.

"This defendant excepts to the finding of the Master, stated on page 20 of the report, that in Massachusetts and Florida, Green took an active interest in yachting and boating, owned a number of boats, and gave trophies for water sports, because the said statement and finding does not inform the Court of the decline of Green's interest in yachting and boating and the giving of trophies for water sports in Massachusetts, and his continued interest in yachting and boating and giving of tropies for water sports in Florida."

In 1918 Green purchased a number of boats in Massachusetts (D. 320, R. 6787-9), but beginning about 1921 or 1922 he gradually sold off all of his Massachusetts boats except the Lydia (D. 320, R. 6806-7; Fla. Ex. 3, D. 50, R. 3490, D. 156, R. 3557-60). There is no evidence that he ever personally used the boat Lydia after he acquired the boat Daydream in 1919 (D. 320, R. 6787; Fla. Ex. 3, D. 150, R. 3490).

He owned several boats in Florida, and apparently got a great deal of enjoyment from boating and yachting in Florida waters (D. 248, R. 5479-80 and 5486; D. 209, R. 4996; D. 364, R. 8600-4).

On his first trip to Florida in 1923 he bought a house boat called the Pioneer at a cost of $107,000 (Fla. Ex. 3, D. 150, R. 3490). That year he ordered another boat built in Jacksonville, Florida, and took delivery of same in 1924 (D. 248, R. 5486, D. 212, R. 5052). This boat cost approximately $160,000 and was called the Colonel.

(Fla. Ex. 2, D. 150, R. 3487). Green and his family lived on the boat Colonel while in Florida, until his Star Island home was completed and occupied in 1927. He subsequently had the boat Colonel converted to represent a Mississippi showboat, and kept her anchored at the dock at his Star Island home where it became the scene of some colorful parties (D. 364, R. 8606, D. 351 and 352, R. 8245; Fla. Ex. 95, D. 344, R. 8032). This boat was kept by Green until 1934 (Fla. Ex. 3, D. 150, R. 3490). The Mabel G. was another boat built for Green at a cost of about $42,500 and kept in Florida waters. It was a speed cruiser and was considered Mrs. Green's yacht. It was always kept ready for use while the Greens were in Florida (D. 364-5, D. 354, R. 8355, et seq.; Fla. Ex. 3, D. 150, R. 3490). The Isola Stella (Italian for Star Island) was of the gondola type, and was built for Green in Miami in 1928 at a cost of $29,000. It was constructed so as to pass under low bridges in cruising up and down the Indian River in the Inland waterways of Miami Beach and vicinity. This boat was retained by Green until he died (D. 364-5, R. 8603 et seq.). It carried the legend, "Isola Stella, Miami Beach," on her stern (D. 364-5, R. 8604; Fla. Ex. 19, D. 250, R. 5518), and was registered at Tampa with her home port Miami (Fla. Ex. 112, D. 354, R. 8369, 8360). This boat was also owned and kept by Green until the time of his death. The boat Friday built in Miami at a cost of $23,000 was also registered with her home port, Miami, Florida, and retained by Green until his death (D. 360, R. 8451, D. 364, R. 8605). Green entered the Isola Stella in a marine pageant in 1928 (D. 352, R. 8256), and he and Mrs. Green were personally aboard her at that time. (D. 352, R. 8258). Green supported the International Regatta given by the Palm Beach Yacht Club in 1934, (Fla. Ex. 260,

D. 383, R. 9086). Green was a member of the Biscayne Bay Yacht Club (R. 9110), and the Southeastern Yacht Club (Fla. Ex. 261, D. 383, R. 9088), the Waterways Highway Association (Fla. Exs. 266 and 267, D. 383, R. 9104 et seq.) and the Florida Outboard Motor Boat Association (Fla. Ex. 250, D. 383, R. 9068). He was an enthusiastic supporter of the annual Biscayne Bay Regatta. He contributed to the support of Regattas and gave the Edward H. R. Green Star Island trophy for outboard motor races. This was a very valuable trophy and much sought after, and small replicas thereof were annually given for keeps to the annual winners (D. 356, R. 8397).

So while it does appear as the Master found on page 20 of his Report that in Massachusetts and Florida Green took an active interest in yachting and boating and owned a number of boats and gave trophies for water sports, it is a fact shown by the record that long prior to his death he sold off all of his Massachusetts boats except one, which was unusable so far as is disclosed by the record evidence, and there is no evidence to the effect that his interest in yachting and boating and giving of trophies for water sports in Massachusetts continued to the end; while on the other hand it is a fact established by the record that he continued to own boats in Florida as long as he lived, and these boats were kept manned and ready for use at all times, and that he continued to manifest his interest in yachting and boating in Florida waters by giving trophies for water sports; and this variation in interest between the two places is not disclosed by the Master's Report.

EXCEPTION III.

"This defendant excepts to the finding stated in the first full paragraph on page 20 of the Master's Report, as follows:

'He cared nothing for society and never went to social functions,'

because the Master failed to find that in Florida, Green manifested an interest in social functions given by himself and wife."

Green and his wife entertained quite frequently in their Star Island home in Florida (D. 352, R. 8260). They generally gave two elaborate parties a year (D. 351, R. 8243), and a number of lesser parties (D. 351-2, R. 8244). They had friends in for dinner from time to time and to see the movies (R. 8275). Mrs. Green entertained with luncheons and teas occasionally (D. 351-2, R. 8250, D. 354, R. 8341). Of the two elaborate parties given annually, one was jointly by Green and his wife, and the other by Mrs. Green alone (D. 351-2, R. 8243, D. 354, R. 8342). These were attended by both men and women, and Green was consulted as to arrangements (R. 8244). Sometimes he would sit in his wheel chair in the reception room and greet the guests as they arrived (R. 8260). At other times he would watch from the balcony (D. 351-2, R. 8247), and on one occasion there was a floral screen constructed in the niche above where he could see without being seen (D. 350, R. 8208). For the outstanding social function given in the Green home on Star Island, Miami Beach, the caterer's bill was approximately $2200 (D. 351-2, R. 8246), and the bill for the electrical display was in excess of $6800 (D.

356, R. 8386; Fla. Ex. 111, D. 353, R. 8326). It was about the most elaborate party ever given in the home in Miami Beach (D. 355, R. 8379; D. 351-2, R. 8247; D. 352, R. 8260). Green issued the orders for the lighting job, watched the work, and took much interest in it (D. 355, R. 8378-80). When it was over he regarded it as a success and was much pleased, and expressed his appreciation to the caterer for her work in making it an outstanding occasion (D. 351-2, R. 8249; R. 8254). It could hardly be claimed that Green was interested in society in a broad sense, but the record establishes the fact that in his home in Florida to a limited extent, he was interested in those social events given by his wife and by the two of them jointly.

EXCEPTION IV.

"This defendant excepts to the finding stated on page 20 of the Master's Report as follows:

> 'He had no religious affiliations, but contributed substantial sums to charitable organizations wherever he happened to be,'

because the said finding does not inform the Court of the decline of Green's interest in and contributions to charitable organizations in Massachusetts, and his continued interest in and contributions to religious and charitable organizations in Florida."

In 1936 Green contributed $750 to the Texas Memorial Museum, and this was the only contribution made to any organization in Texas after 1921 (Mass. Ex. 59-C,

D. 146, R. 3429). His contributions to organizations in New York after 1928 totalled less than $100, the last of which was in the amount of $5.00 on April 27, 1932 (Mass. Ex. 59-B, D. 144, R. 3427).

The only contributions made by Green to charitable organizations in Massachusetts after 1928 as shown by the record, were as follows:

December 2, 1930—Red Cross	$10.00
November 2, 1931—Disabled American Veterans	25.00
November 27, 1931—Red Cross	10.00

making a total of $45 to charities in Massachusetts after 1928 (Mass. Ex. 59-A, D. 143, R. 3426). He made no contribution to religious organizations in either Texas, New York, or Massachusetts after 1928.

Green's religious and charitable contributions in Florida after 1928 were as follows:

February 1, 1929—Red Cross	$ 1.00
April 1, 1929—Community Chest	1000.00
March 3, 1930—Community Church	250.00
May 23, 1930—St. Patricks Church	100.00
December 24, 1930—Miami Empty Stocking Fund	500.00
January 20, 1931—American Legion	10.00
February 6, 1931—Community Church	250.00
January 14, 1932—Temple of Israel Sisterhood	10.00
February 3, 1932—National Council of Jewish Women	10.00

February 5, 1932—Dade County Community Chest	250.00
March 4, 1932—Miami Beach Community Chest	250.00
April 1, 1932—Miami Unemployment Fund	15.00
February 28, 1933—Miami Community Chest	1000.00
May 5, 1933—Jackson Memorial Hospital of Miami	5000.00
March 17, 1934—Community Church	250.00
February 1, 1935—Community Church	250.00
March 23, 1935—St. Francis Hospital	100.00

(Fla. Ex. 25, D. 156, R. 3576).

These contributions to the work of religion and charity in Florida were not large, it is true, but they continued long after his contributions to like purposes in other places had ceased, and constitute one of the small indications of his interest in and attachment for community welfare in the place where he had established the only home of which he was the sole owner, and is indicative of his regard for his Star Island home as his principal home.

EXCEPTION V.

"This defendant excepts to the finding stated in the second paragraph on page 27 of the Master's Report as follows:

> 'With few exceptions, in substantially all deeds, papers, and legal documents, he described himself as of Terrell, Texas,'

> because the Master failed to find that in a substantial number of deeds, papers and legal documents made and executed both by and to Green during his last few years in Florida, he described himself and was described as of 46 Star Island, Miami Beach, Dade County, Florida."

In many written instruments executed both by and to Green during the last few years of his life, including deeds, contracts, mortgages, legal documents, application for motor vehicle registration, and for motor vehicle title certificate, some of which were sworn to by him, he described himself and was described as a resident of Star Island, Miami Beach, Dade County, Florida. His applications for motor vehicle title certificate gave his residence as 46 Star Island, Miami Beach, Dade County, Florida, and were sworn to by him as being true. (Fla. Exs. 293-320 inc., D. 384, R. 9171-9323 inc., also D. 359-60, R. 8451; Fla. Exs. 293, D. 384, R. 9171; 294, D. 384, R. 9176; 295, D. 384, R. 9181; 296, D. 384, R. 9184; 297, D. 384, R. 9187; 299, D. 384, R. 9202; 300, D. 384, R. 9204; 304, D. 384, R. 9224; 305, D. 384, R. 9230; 308, D. 384, R. 9254; 310, D. 384, R. 9271; 311, D. 384, R. 9277; 312, D. 384, R. 9279; 314, D. 384, R. 9291; 315, D. 384, R. 9295; 316, D. 384, R. 9298; R. 9182, 9185, 9213, 9216, 9221, 9202, 9206; Fla. Ex. 300, D. 384, R. 9208-9).

His last application for motor vehicle title certificate was dated January 21, 1936, and gave his address as Star Island, Miami Beach, Dade County, Florida, and was signed and sworn to by Edward H. R. Green (Fla. Ex. 320, R. 9323). He executed and accepted deeds and other documents wherein his residence was stated as

Dade County, Florida (Fla. Exs. 298, D. 385, R. 9193; 306, D. 385, R. 9236; 307, D. 385, R. 9247; 313, D. 385, R. 9283; 317, D. 385, R. 9301; 318, D. 385, R. 9312).

On April 14, 1927, he entered into a co-partnership agreement, which was sworn to by him, in which his residence was stated Dade County, Florida (Fla. Ex. 163, D. 365, R. 8630). On April 2, 1928, he as Vice President made application for certificate of incorporation of a Florida corporation in which his residence was stated as Star Island, Miami Beach, Florida, and was sworn to by him. (Fla. Ex. 164, D. 365, R. 8635). On January 20, 1931, Green, joined by his wife, executed a deed to property in which they stated they were residents of Dade County, Florida, which deed was duly acknowledged and sworn to before a Notary Public (Fla. Ex. 313, D. 385, R. 9283). The last deed executed by Green was dated May 11, 1935, and was duly acknowledged and sworn to by him and his wife before a Notary Public, in which they were described as of the County of Dade and the State of Florida. On March 2, 1932, Green executed a manager's oath in connection with the operation of the boat Friday, which gave Miami as the home port, and described him as of Miami Beach, County of Dade, State of Florida, which was duly signed by E. H. R. Green and sworn to before a Notary Public.

Thus it appears that while in former years in substantially all deeds, papers, and legal documents, he described himself as of Terrell, Texas, in the last few years of his life and with particular reference to the period covered by his residence in Florida, he described himself and was described in many deeds, papers and legal documents as of Star Island, Miami Beach, Florida.

EXCEPTION VI.

"This defendant excepts to the finding stated in the second full paragraph on page 27 of the Master's Report as follows:

> 'And the registration of his yacht and numerous boats showing Galveston, Texas, as the home port,'

because the Master failed to find that the boats acquired by Green in his later years were registered in Florida with the home port shown there."

Green's yacht, United States, and his earlier boats, were in fact registered in Texas with their home ports shown as Galveston, but his boats acquired after the establishment of his home on Star Island were registered in Florida with their home port shown as Miami, Florida. (D. 359-60; R. 8450-1; D. 364, R. 8605; Fla. Ex. 112, D. 354, R. 8369; D. 354, R. 8360).

This is significant as another indication of Green's transfer of interest to Florida.

EXCEPTION VII.

"This defendant excepts to the finding of the Master stated on page 35 of the Master's Report wherein he found that on Green's first visit to Round Hills in August, 1917, he determined to build there a monumental home, because such finding is contrary to the evidence."

On Green's first visit to Round Hills, after his marriage in 1917, he planned various developments on the estate property (D. 305-7, R. 6520, et seq.), but according to his own statement he did not at that time plan to build a house to live in himself. When asked if he so intended, he replied: "Oh, no, I never will erect a house there; that is my house * * *" pointing to his boat (D. 307, R. 6570). According to his own statement he did not, at that time, determine to build a home but merely planned other developments.

EXCEPTION VIII.

"This defendant excepts to the finding stated in the last paragraph on page 35 of the Master's Report, as follows:

'From 1918 to 1921 the development of this property was his principal occupation * * *.'

because: (a) such finding is contrary to the evidence; (b) the Master failed to find that from 1918 to 1921 Green's principal occupation was the management of the great estate left by his mother Hetty Green, of which he was the sole trustee."

It is not fair to say that from 1918 to 1921 the development of the Round Hills property was Green's principal occupation. During that period he was living in New York where he devoted his time to his business interests, including the management of the Hetty Green estate, of which he was trustee, and even while staying

in Massachusetts he made weekly trips back to New York looking after his business interests. It is a fact shown by the record that he was interested in the development of the Round Hills property from 1918 to 1921, but by no means was that his principal occupation (D. 121, R. 3062; New York Ex. 39, D. 129, R. 3221; D. 319, R. 6785).

EXCEPTION IX.

"This defendant excepts to the finding stated in the second paragraph on page 36 of the Master's Report, as follows:

'But with this exception retained the whole estate of about 270 acres up to the time of his death,'

because the Master failed to find that Mrs. Wilks and Green jointly owned and retained about 130 acres of the Round Hills property together with the improvements thereon including the Round Hills House."

The statement here excepted to is incorrect in that Green owned only a one-half undivided interest in the estate property consisting of about 130 acres. In other words, he did not own the entire 270 acres and could not retain that which he did not have (D. 296-8, R. 6344, et seq. D. 298, R. 6559-6561; Fla. Ex. 30, D. 320, R. 6810).

EXCEPTION X.

"This defendant excepts to the finding stated on page 42 of the Master's Report as follows:

> 'His remains were brought there from Lake Placid for the funeral service, and Mrs. Green continued to occupy Round Hills for six months after his death,'
>
> because: (a) it has no evidentiary value in determining the issue involved here; (b) there was no evidence that Green requested that his remains be brought to Round Hills for funeral services."

If a man's domicil is to be determined by his habits of life, then what is done with his body and how his property is used after his death has no bearing on the determination of that question. This is particularly true in the instant case because there is nothing in the record to indicate that Green desired his remains to be carried back to Round Hills for funeral service nor that it was his wish that his widow occupy the Round Hills house for six months after his death. Apparently, however, the facts stated in the Master's Report, to which this exception is directed, influenced him to some extent in arriving at the finding and conclusion that Round Hills was Green's principal home at the time of his death and this illustrates the weakness of the support for that ultimate finding and conclusion.

EXCEPTION XI.

"This defendant excepts to the findings stated on page 42 of the Master's Report as follows:

'Between 1917 and 1926 Green [illegible] on the Round Hills [illegible] each summer.

count and maintenance $6,688,639.55 (D. 268),'

because the Master failed to further find and inform the Court that the said amount included large sums of money spent on radio, aviation, Whaling Enshrined, and other activities not connected with Round Hills as a place of residence."

Green expended on the Round Hills estate on both capital account and maintenance the sum of $6,688,639.55 between 1917 and 1936, as found by the Master, but by far the greater part of that amount was expended on his experimental projects and activities connected with the memorial features of Round Hills and not on the Round Hills house as a place of residence (Mass. Exs. 410, 410A, 410B, 410C, D. 264-7, R. 5808 et seq.). The said amount was made up as follows as shown by the record:

Round Hills House	$ 785,323.42
Expense for running same	924,037.89
Round Hills Farm	616,127.44
Expense in connection with same	2,269,400.16
South Wharf Property	133,314.77
Expense	170,432.65
Machine Shop, South Wharf	65,487.00
Round Hills Radio—Expense	1,524,460.31
Whaling Enshrined	132,432.94
Round Hills Hotel	66,177.40
Expense in connection with same	1,445.57
	$6,688,639.55

A large part of the expense of operating the Round Hills Farm was for filling in and maintaining the aviation field and the airport (D. 328, R. 6967-9). Exclusive of the memorial and experimental projects and those things not usually found in connection with an exclusive home, no more was spent on the Round Hills house and its upkeep than was spent on the Star Island home and its upkeep and expense of operation; and it is an unfair comparison and argument to include those activities which have nothing to do with a home as such, in order to make it appear that his interest in Round Hills was greater than that in Star Island.

EXCEPTION XII.

> "This defendant excepts to the findings stated on page 42 of the Master's Report, as follows:
>
> 'He * * * never openly acknowledged Round Hills as his legal residence,'
>
> because the Master failed to find: (a) that Green never in any manner acknowledged Round Hills to be his legal residence; (b) that in every instance where the subject was discussed, Green invariably acknowledged that Round Hills was not his legal residence."

The statement here excepted to is objectionable because of the intimation that in some way at some time Green might have acknowledged Round Hills as his legal residence without openly doing so. Such is not the fact. He never in any way acknowledged Round Hills as his legal residence, but on the contrary consistently when

the opportunity presented itself stated that he was not a legal resident of Massachusetts.

In 1922 Green was urged to run as a Republican for Congress in Massachusetts in the district in which the Round Hills place is situate. He acknowledged the solicitation as a very great honor, but declined, saying:

> "It is impossible for me to do it because I am a resident of Texas." (D. 89, R. 2725).

In the fall of 1924 Green was asked why, with all the work going on at Round Hills, he did not stay there for Christmas and New Year and help supervise the work. Green replied:

> "'Neyland, I cannot do it. I must leave before Christmas,' and he said, 'You know I can't stay in Massachusetts six months. I am afraid they will claim me as a resident and tax me accordingly, and that I want to avoid. Also, I have bought property in Florida and I am anxious to get down there and start developing.'" (D. 316, R. 6722).

In 1925 the citizens of Dartmouth, Massachusetts, wanted to elect him to some honorary position, which he refused giving as his reason:

> "It would be rather strange if they elected a legal resident of Texas to an office up here." (D. 89, R. 2734).

On November 18, 1926, Green wrote Miss Amelia H. Jones of New Bedford, Massachusetts, in response to

a request that he increase his contribution to community funds in New Bedford, in which he said:

> "I appreciate very much the sentiment expressed in your letter, but as I am really not a citizen of New Bedford, and am called upon for the community funds in both Florida and Texas, where I have homes, and, furthermore, as the people in Florida have suffered as much or more than those in New Bedford, after careful consideration I do not feel that I can consistently increase my donation for New Bedford over that of last year * * *." (Tex. Ex. 332, D. 155, R. 3553).

This letter is important in that it was a statement from Green in writing that he was not a citizen of New Bedford, Massachusetts.

In 1928 Green told Commissioner Long of Massachusetts that he wanted to consider himself as a resident of Texas, and while he felt very kindly toward Massachusetts he was not of the opinion that the time had arrived when he wanted to establish himself as a citizen of Massachusetts and a taxpayer. (D. 339, R. 7077).

In 1929 Green was suggested for appointment to fill a vacancy on the Federal Radio Commission from New England, which he refused, giving as one reason that he spent only summer months in New England. (D. 185, R. 4573).

On one occasion Green was at Round Hills as late as the 17th or 18th of December. He came in from New Bedford, and said that he heard while in New Bedford that they were pleased to see him there so late; that

they thought he was going to stay for Christmas and that they would catch him, but he was going to fool them and leave before the time was up. (D. 260, R. 5709).

On January 19, 1935, the American Legion Texas Centennial Committee by A. Garland Adair, Chairman, issued to Green a certificate of distinguished service to Texas, in which Green's residence was shown as Massachusetts. On January 15, 1935, Green wrote Mr. A. Garland Adair, Chairman, American Legion Texas Centennial Commission, acknowledging receipt of his letter of the 10th and the certificate of distinguished service to Texas, for which he sincerely thanked Mr. Adair and the other gentlemen who conferred that honor upon him, and assured him of his great appreciation. As to his residence being in Massachusetts he wrote:

> "However, I note that my residence is shown as Massachusetts. That is not correct, as I have never changed my legal residence from Terrell, Texas, and if it is not too much trouble, I would thank you to make the change. I am returning the certificate under separate cover." (Texas Ex. 18-A, D. 49, R. 1042).

This happened just a little over a year before Green's death, and we find him declining to accept the certificate with his residence stated as Massachusetts, whereas in many legal documents in the latter years of his life, such as deeds, mortgages, contracts, bills of sale, applications for motor vehicle registration, and sworn applications for motor vehicle title certificate, some of which were executed by him and others executed to him, his address was shown as Miami Beach, Dade County, Florida.

The Master should have said that on numerous occasions Green openly acknowledged that Round Hills was not his legal residence.

EXCEPTION XIII.

> "This defendant excepts to the finding stated on page 43 of the Master's report, as follows:
>
> 'He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived,'
>
> because the Master failed to find that as his activities in Massachusetts were curtailed or discontinued and his interest declined, his activities and interests in Florida increased and continued."

The statement here excepted to refers to Green's activities and interest at Round Hills from and after September, 1932. There is much evidence in the record that many of his projects at Round Hills were abandoned and that his interest in things there very materially decreased.

He lost his interest in radio at Round Hills (D. 248, R. 5471) and radio was abandoned (R. 6703, et seq.). His golf course was abandoned (R. 7043). The swimming pool was allowed to run down and was abandoned (R. 6977). The farm was no longer of interest to him and throughout the time Mr. Tulloch was his Farm Superintendent from 1932 to Green's death, Green did not

speak to him about his work. When horses on the farm died, they were not replaced (D. 340, R. 7093-4).

The airport was a disappointment to him and he lost his interest in it (D. 341-2, R. 7117; D. 91, R. 2765).

He lost interest in the experiments of M. I. T. and ceased making contributions thereto (D. 323, R. 6845; D. 248, R. 5472; Mass. Ex. 59a, D. 143, R. 3426; Florida Exs. 31, 32, 33 and 34, D. 324, R. 6862, 6866, 6868 and 6870).

After 1928 his contributions to local community projects in Massachusetts gradually declined and finally ceased. He resigned from Massachusetts clubs and afterwards lost practically all interest in Round Hills (D. 323 and 342, R. 6845 and 7123).

In 1929 he stated that he felt his work at Round Hills was drawing to a close (R. 2768). He refused to aid the City of New Bedford, notwithstanding the urgent plea made to him to that effect (Texas Exs. 364 and 365, D. 96, R. 2850-1). His attitude toward Round Hills in his latter years was one of indifference and disinterest, and truly the statement of Witness Vander, an employee of Green's, that Green had lost all interest in Round Hills has support in the record (D. 341, R. 7118).

EXCEPTION XIV.

"This defendant excepts to the finding stated in the first paragraph on pages 43 and 44 of the Master's Report, as follows:

'While there, Green purchased two adjacent lots for $120,000, one of which contained a

yacht club which he remodeled into a dwelling for the following season.'

because: (a) the Master failed to find that the club house was razed and a dwelling erected on said lot, new in every respect except that the walls of the reception room of the club house were retained and formed the walls of the living room in the dwelling so erected; (b) the Master failed to find that the dwelling erected on said lot was designed and constructed as a home for Green and his family and so used from the time of its occupancy in 1927 until his death."

The statement here excepted to is incorrect in the first place because it is not true that the yacht club was remodeled into a dwelling. The club building was torn down and a dwelling erected on the club property site, new and complete in every respect except that only the walls of the reception room of the club house were retained and formed the walls of the living room in the residence. (Fla. Ex. 60, D. 343, R. 7929; D. 345, R. 8056-7). This was done because Green was very fond of the plan of the reception room and wanted to adopt it into the plan of his residence for a living room (D. 249, R. 5513), although the old club building could have been discarded and the residence built anew throughout at no greater cost (R. 8057). So it is not fair or even true to say that the yacht club was remodeled into a dwelling, when in fact only the walls of one room were retained and no more.

In the next place it was not remodeled into a dwelling for the following season, but instead a residence was constructed as Green's permanent home and was so used

by him and his family from the time it was occupied in 1927 until his death. The first work was started in 1925 and completed in 1926. No effort was spared to make the Star Island home attractive and livable. Architects were employed to prepare plans for the building, and additions and improvements were made from year to year, and very large sums of money were expended in carrying out Green's personal ideas as to a home, all of which shows that it was not intended as a dwelling for the following season as stated by the Master, but rather that it was his plan and purpose to make this his permanent home.

When Green bought his first lot on Star Island in 1924 he employed an outstanding landscape architect to develop and beautify his grounds and establish a garden in keeping with the gardens of the best homes in that community, and that employment was continued from that time until Green's death. In time Green had and thereafter maintained one of the most beautiful and outstanding exotic gardens in all of the greater Miami area. He loved his garden and enjoyed having visitors view and admire it from the driveway through Star Island, but the public was not admitted to the privacy of his grounds, at the entrance of which he maintained a sign, "Private." There was nothing about his Star Island home or grounds to indicate anything other than a private residence and a real home.

EXCEPTION XV.

"This defendant excepts to the finding stated in the first incomplete paragraph on page 44 of the Master's Report as follows:

> 'During the succeeding years until his death, Green's average stay in Florida was about four and one-half months between January and May,'
>
> because: (a) the Master failed to find the steady increase in time spent by Green in his Star Island home from the time it was first occupied in 1927; (b) the Master failed to find that for the period beginning with 1928 down to June 8, 1936, Green spent more time in Florida than in Massachusetts; (c) the Master failed to find that Green spent his last three Christmases in his Star Island home, Miami Beach, Florida."

The statement here excepted to is manifestly unfair to Florida, because it gives only an estimated average of the time spent by Green in Florida from the time he occupied his Star Island home until his death. And because this estimated average was less than the estimated average time the Master found that Green spent in Massachusetts, obviously the Master considered that fact as having an important bearing on Green's attitude toward the two places in respect to the question of which was his principal home. After Green became established in his Star Island home his interest steadily increased, as shown by the many changes and improvements made, and by his community and business activities; and thereupon he gradually began the practice of coming to Florida earlier in the fall and staying later in the spring or summer. These are some of the ways in which a man's interest is shown in his home, and if it is proper to make comparisons as to the time spent in two or more homes, in fairness the facts should be stated which would in-

dicate an increase in interest. The time spent by Green at Round Hills from the completion of the Round Hills house until his death, varied very little from year to year, whereas the time he spent in his Star Island home increased steadily year by year from 1927 until 1934, when he spent there a little more than six months. (Fla. Ex. 108, D. 351, R. 8234). The last two years he was there he probably would have stayed longer, but was sent away by his doctor. (D. 108, R. 7363-4). He stated that he would like to spend even more time in Florida (D. 350-1, R. 8214), and that every time he came to Florida he liked it better (D. 316, R. 6724). After the year 1927 he actually spent more time in Florida than any other place (Fla. Ex. 108, D. 351, R. 8234; Mass. Exs. 18, 57, 460; D. 139, 333, R. 816, 3407, 7551), and he spent his last three Christmases in his Star Island home in Florida. (Fla. Ex. 108, D. 351, R. 8234).

These facts unmistakeably indicate a growing attachment for his Florida home and that he had come to regard it as his principal home.

EXCEPTION XVI.

"This defendant excepts to the Master's Report because he failed to find or show: (a) the progressive building up of Green's Star Island home; (b) that in 1927 it was completely remodeled for further comfort and to satisfy Green's requirements; (c) that in 1928 and 1929 further extensive additions and alterations were made; (d) and in 1931 an entire new wing was added at a cost of approximately $85,000, which

wing became the living quarters of Green and his wife; (e) that said Star Island home was kept in A-1 condition until Green's death."

We deem it important that the Court be informed as to the progressive development of Green's Florida home. He came to Florida first in 1923 on orders of his personal physician in New York. He liked it here and it did not require his doctor's orders to get him back. He came again in 1924, and after careful investigation as to a suitable location for a home, purchased one lot on Star Island. He came again in 1925 and purchased two additional lots adjoining his first lot on Star Island. He immediately employed a landscape architect to develop this property and also employed an architect to plan his future home. Contract was awarded for approximately $84,000. The construction of his residence was somewhat delayed on account of an embargo which made it difficult to secure building material (Fla. Ex. 61, D. 343, R. 7933), and it was not completed until May, 1926, at a cost of approximately $114,000 including extras. When Green came to Florida in 1926 he did not move into his new residence (Fla. Ex. 66, D. 343, R. 7945), but employed a Mr. Raphael of New York as Superintendent in charge of alterations and remodeling (Fla. Ex. 66, D. 343, R. 7945), and again employed the J. B. Orr Construction Company to make further alterations at a cost of approximately $100,000 (D. 344-5, R. 8058; Fla. Ex. 69, D. 343, R. 7956). The work and material was the best that money could buy (D. 345, R. 8059). Green manifested his interest in the development of his Florida home by showing his plans to his friends in the North, and discussing the working out of details as to the different rooms with reference to the beauty, comfort and

convenience he had in mind for his home there (D. 91, R. 2763-4; D. 316, R. 6723). In 1928 additional improvements were made at a cost exceeding $70,000. Alterations were made in the main house and servants' quarters were built (D. 345, R. 8059; Fla. Ex. 81, D. 344, R. 7994). Again the work was exceptionally fine and the tile work very elaborate (D. 345, R. 8060). In 1929 Green wrote his architects in Miami enclosing a sketch of proposed changes he again desired made to his Star Island home, with the request for suggestions from them to make it more comfortable, the same as if it had been their own place (Fla. Ex. 90, D. 344, R. 8022). Accordingly, alterations were made that were pursuant to plans worked out by his architects to meet his requirements (Fla. Exs. 91 and 92, D. 344, R. 8025 and 8029). In 1931 a new wing was added to the Star Island residence at a cost of approximately $85,000 (D. 346, R. 8087; Fla. Ex. 98, D. 344, R. 8038). This wing became the living quarters of Green and his wife, and consisted of a corridor connecting the main house to the new wing, a large living room, two master bedrooms on the second floor, a sunporch, two large baths, and elevator and staircase (D. 344, R. 8027). Again the material was the best that money could buy (D. 346, R. 8087). The old elevator was replaced by a new Otis elevator (D. 346, R. 8090-1). The floor plans were the personal ideas of Green (R. 4113). The home as finally completed cost nearly three-quarters of a million dollars (Fla. Exs. 4 and 98, D. 151, R. 3496 and 8038), was one of the finest in the community, and was kept in A-1 condition up to the time of Green's death (D. 91, 346, 361, 368, and 372; R. 2761, 8103, 8490, 8689, and 8842). He had his monogram consisting of two G's interwoven in special design

at the main entrance to his Star Island home (D. 347, R. 8126; Fla. Ex. 103, D. 347, R. 8127), and worked into the floor tile at both entrances and in concrete over the main entrance to his home (D. 347, R. 8126 et seq.; Fla. Exs. 102 and 117, D. 347 and 360, R. 8124 and 8460). He also had his monogram of two G's painted on the panels of the elevator shaft (D. 348, R. 8167). There were also what appeared to be his crest and coat of arms worked in tile at the main entrance to his home. The furniture in the Star Island house was specially designed and custom-built to reflect the individuality of the particular room in which it was placed (D. 347, R. 8114-5; D. 406, R. 9713-5). Some of it came from the factory in Massachusetts and the other from the markets of New York, or wherever he could find just what suited the requirements (R. 8113-5; Fla. Exs. 73, 77, 78, 121, 122 and 123; D. 343 and 360, R. 7971, 7981, 7986, 8468, 8473, and 8475). The grounds were beautifully landscaped and kept in excellent condition at a cost of $12,000 annually (D. 349, R. 8196). There was no finer landscaping in the Miami area (D. 350, 381-2, R. 8202, and 9022). Green was fond of his gardens and flowers (D. 367 and 382, R. 8677 and 9022), and wanted to see his flowers blooming when he arrived each year (D. 349, R. 8200).

EXCEPTION XVII.

"This defendant excepts to the finding stated in the last sentence of the first incomplete paragraph on page 45 of the Master's Report, as follows:

'The house contained no library, no framed pictures, or mementoes of his ancestors, or

articles of a sentimental nature or personal association as at Round Hills,'

because: (a) the Master failed to find that Green's Star Island home contained a library; (b) that it contained a photograph of his mother; (c) that it contained oil paintings of himself; (d) that it contained articles of a sentimental nature to him."

The evidence shows that the Star Island home had a library consisting of approximately 850 volumes (Tex. Ex. 327, R. 4052, 4098). Green kept a photograph of his mother, Hetty Green, in his Star Island home (R. 8137). The Star Island home also contained two oil paintings of Green himself and several photographs of his wife. On the walls of Green's bedroom in the Star Island home were four framed prize awards presented to him in 1934 by the National Stamp Association of New York for his stamp collections which he prized highly (R. 8168-9), and it was in his Star Island home that he kept his yachting trophies (Tex. Ex. 327, R. 4102). So the Star Island home did contain a library, framed pictures, a picture of his mother and articles of a sentimental nature and personal association to Green.

EXCEPTION XVIII.

"This defendant excepts to the finding stated on pages 45-46 of the Master's Report, as follows:

'Green also had several automobiles for himself and Mrs. Green containing Florida

> and Massachusetts license plates, which were brought from Round Hills to Star Island and sent back at the end of the season,'
>
> because the Master failed to find that some of the automobiles referred to were purchased by Green in Florida and carried from his home at Star Island to Round Hills and back to Star Island upon his return rather than having been 'brought from Round Hills to Star Island and sent back at the end of the season.' "

It is a fact as stated by the Master that some of the automobiles belonging to Green and Mrs. Green carried Florida license plates and some Massachusetts plates, and it may be true that some of their cars were acquired in Massachusetts, and in that case came first from Massachusetts to Florida and back to Massachusetts, but it is also a fact that some of their automobiles were acquired in Florida and were carried first from Florida to Round Hills and then back to Florida (Fla. Ex. 293, R. 9171; Fla. Ex. 294, R. 9176; Fla. Ex. 297, R. 9187; Fla. Ex. 310, R. 9271; D. 361, R. 8492-3). This is unimportant except that it illustrates the apparent effort to bolster the finding of domicil in favor of Massachusetts.

EXCEPTION XIX.

> "This defendant excepts to the finding stated on page 47 of the Master's Report, as follows: 'Everything he did indicated a seasonal

vacation and relaxation from physical and mental effort,'

because the said statement is contrary to the fact established by the record."

The statement here excepted to is wholly without justification or foundation in fact. In the first place it presupposes that Green needed vacation and relaxation from physical and mental effort. The Master has already found that his principal occupation from 1918 to 1921 was the development of the Round Hills property. If that was at that time his principal occupation, his labors had been completed prior to the time he came to Florida, and so far as the record discloses he certainly put forth no physical effort at Round Hills after that time; and if things were as pleasant for him at Round Hills as the Master's report would indicate, he should have had no mental worries from which he needed either vacation or relaxation. If the use of the term "seasonal vacation" has reference to the season of the year spent in Florida, and if this is a good reason for finding against Florida, the same rule should be applied to Massachusetts, where he spent only a part of the summer and fall each year, sandwiched in between two summer colonies. It could hardly be considered fair to apply one rule to Florida and a different rule to Massachusetts. The only thing that can be said in favor of this statement is that although he was engaged in business in Florida and interested in various phases and activities of community life, it was so pleasant and agreeable here that he needed no vacation or relaxation from his Florida physical and mental efforts.

After he became established in his Florida home he became interested in and supported many phases of the community life, social, political, charitable and religious (Fla. Exs. 179-181, D. 369-70, R. 8753, D. 369, R. 8726). He was financially interested in the Fogal Dry Dock and Storage Company of Miami (Fla. Exs. 158, 163 and 164, D. 364 and 365, R. 8601-8609, 8625 and 8635.) He put over $100,000 in this business and took a personal interest in it (D. 365, R. 8641 et seq.). He was a stockholder in the Miami Beach First National Bank and the First National Bank of Miami (Fla. Ex. 187, D. 370, R. 8771; D. 105, R. 7289-91). He had been a stockholder in the Bank of Bay Biscayne and the Miami Beach Bank and Trust Company (Fla. Exs. 185, 186 and 198, D. 370, R. 8765, 8768 and 8797). He joined a combine to buy up shares of stock in the Bank of Bay Biscayne, and owned 700 of its shares at the time the bank closed. He paid a 100% personal assessment on his stock promptly and without protest (Fla. Exs. 199 and 200, D. 370-1, R. 8799, 8801). He had previously loaned this bank $750,000 (Fla. Exs. 189 to 192, D. 153 and 370, R. 3556 and 8776-84) and agreed to put up $3,000,000.00 if that amount was found sufficient to reopen the bank, but when it was found that more was needed, the matter was dropped (D. 395, R. 9472-5). He described himself as a Florida cracker and a citizen of Miami Beach (D. 366, R. 8659; D. 373, R. 8847, R. 8838, D. 374, R. 8854; D. 366, R. 8661, D. 359, R. 8441). The things he did in Florida were such that the community considered him one of the most enthusiastic citizens of Miami Beach, and he was granted many considerations on that account. (D. 352, R. 8269; D. 380, R. 8975-76; Fla. Exs. 213, D. 378, R. 8933; 212, D. 378, R. 8931; D. 368, R. 8713 et seq.; Fla.

Exs. 228, D. 379, R. 8972; 217, D. 379, R. 8941; 219, D. 379, R. 8950; 147, D. 363, R. 8567; 140, D. 363, R. 8547; 143, D. 363, R. 8555; 144, D. 363, R. 8558; 145, D. 363, R. 8561; 146, D. 363, R. 8564; 148, D. 363, R. 8569, 225, D. 379, R. 8966; D. 368, R. 8711).

In 1933 he was chosen by the Aritists and Writers Club of Miami Beach to be honored at their annual dinner as an outstanding resident who had distinguished himself by his splendid community spirit (Fla. Ex. 284, D. 384, R. 9152). In 1926 he stated he was going to make his home in Miami Beach, and "this will be my home from now on." (D. 371, R. 8830). He frequently referred to his Star Island place as "home" (D. 353, R. 8335; D. 374, R. 8858-9; D. 91, R. 2761; D. 359, R. 8440-1; D. 368, R. 8715-7; D. 373, R. 8850; D. 366, R. 8660; D. 367, R. 8662; D. 395, R. 9478; D. 358, R. 8418; D. 357, R. 8401-2-3; R. 8253-4; Fla. Exs. 329-36; D. 388-9, R. 9389, et seq.) In 1934 Green said to his old Texas friend, Tucker:

> "I have this comfortable home; I have privacy, I can do as I damn please, and this is my home and I expect to live here the rest of my days." (D. 372, R. 8841-2).

Surely in the face of all this and his many other activities which demonstrate his interest in Florida, it cannot be said that everything he did here indicated a seasonal vacation and relaxation from physical and mental effort, unless it be from the things that had come to annoy and worry him at his Round Hills place, in which event it should be considered not against but in favor of Florida as indicating that Florida had come to be his principal home.

EXCEPTION XX.

"This defendant excepts to the findings stated on page 47 of the Master's Report as follows:

> 'Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health,'

because the said finding is contrary to the fact established by the evidence."

The things that the Master here seeks to exclude from consideration, that is, Green's interest in the Fogal Dry Dock and Storage Company and his interest in the banks of Miami and Miami Beach, are some of the things that tie a man to a place and which cause him to come to regard his home in that place, if he has more than one home, as his principal home. He did own a one-half interest in the Fogal Dry Dock and Storage Company, a company engaged in the manufacture, repair and storage of boats, but he was not interested in any manufacturing enterprise or industry in Massachusetts, although his Round Hills place was located in close proximity to one of the old manufacturing centers of New England. He did not at any time own any interest in the local banks in the community of the Round Hills place. If it is fair to say that, aside from his financial interest in the Fogal Dry Dock and Storage Company and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health, why would it not also be fair

to say that his life in Massachusetts where he had no business interests or connection of any kind, and where he spent only a part of the summer and fall each year, was also typical of an invalid seeking health. This finding, or as we might more properly say, argument, is another effort to boltser up the ultimate conclusion reached by the Master.

EXCEPTION XXI.

> "This defendant excepts to the Master's report because he failed to find that Green disposed of practically all of his boats in Massachusetts and later acquired and kept boats in Florida until his death."

What we said in our discussion under Exception II is applicable to and covers this exception and will not here be repeated.

EXCEPTION XXII.

> "This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, discontinued giving trophies for water sports in Massachusetts and continued to give trophies for water sports in Florida as long as he lived."

What was said in our discussion under Exception II is applicable to and covers this exception and will not here be repeated.

EXCEPTION XXIII.

"This defendant excepts to the Master's Report because he failed to find that Green, long prior to his death, resigned from and gave up his club memberships in Massachusetts and continued his club memberships in Florida until his death."

This exception has been fully covered in our argument in support of Exception I and will not here be repeated.

EXCEPTION XXIV.

"This defendant objects to the Master's Report because he failed to find that Green, long prior to his death, ceased to make contributions to community projects in Massachusetts and continued to make contributions to community projects in Florida."

After 1928 Green's contributions to community projects in Massachusetts practically ceased. In 1931 he gave $500.00 to the State Reclamation Board (Mass. Ex. 59-A, D. 143, R. 3426). In 1932 he gave $1000 to Wheaton College, but stated that it was to compensate for the trouble caused by one of his wards (Fla. Ex. 365, D. 398, R. 9557). His contributions to the experimental work of M. I. T. continued until 1933 when they were stopped, notwithstanding the earnest pleas for their continuance (Mass. Ex. 59-A, D. 143, R. 3426; Fla. Exs. 31-36, D. 324, R. 6862 et seq.)

During this same period his contributions to Florida community projects increased and continued as long as

he lived. In 1928 he gave $1000 to the Shriner's Convention Fund to advertise Miami Beach and vicinity (Fla. Exs. 269-71, D. 383, R. 9114-20). He subscribed $140 to a publication, Sun-Sea-Ara, advertising Miami Beach (Fla. Exs. 220-1, D. 379, R. 8956-8). He sent the Jaycee Boys' Band on an advertising trip to the North at a cost of $3000 (D. 352, R. 8266, D. 380, R. 8977). He was a member of the Dade County Council, Boy Scouts of America, and subscribed to the Scout oath (Fla. Ex. 233, D. 381, R. 8993), and supported their activities (D. 361, R. 8482). He made small contributions to the Order of Eastern Star (Fla. Ex. 290, D. 384, R. 9164), and Veterans of Foreign Wars (Fla. Ex. 289, D. 384, R. 9161), Dixie Boosters Club (Fla. Ex. 292, D. 384, R. 9167), and to the St. Francis Hospital of Miami Beach in 1935 (Fla. Ex. 25, D. 156, R. 3576).

These were not large contributions, but were all strictly local, indicating an interest in the various phases of life in the community, and as such contributions declined and ceased elsewhere they continued in Florida.

EXCEPTION XXV.

> "This defendant excepts to the Master's report because he failed to find that Green, long prior to his death, gave up and discontinued his photography in Massachusetts."

Green's photographic studio was not operated after 1928. Thus we see another of his prior interests at Round Hills falling by the wayside (D. 305, R. 6507).

EXCEPTION XXVI.

"This defendant excepts to the Master's Report because he failed to find that Green lost his interest in radio in Massachusetts long prior to his death."

We have already shown in our discussion of Exception XIII that not only did Green lose his interest in radio at Round Hills (D. 248, R. 5471), but that it was abandoned (R. 6703, et seq.)

EXCEPTION XXVII.

"This defendant excepts to the Master's Report because he failed to find the gradual decline of Green's interest in the Round Hills Airport."

The airport project at Round Hills was a disappointment to Green (D. 91, R. 2765), and although it was begun with his usual enthusiasm, it eventually "faded out." (D. 341-2, R. 7117).

EXCEPTION XXVIII.

"This defendant excepts to the Master's Report because he failed to find that Green's construction of the Round Hills house was primarily for purposes other than a home."

Prior to the death of Hetty Green, she, realizing that the people around New Bedford were not favorably im-

pressed with her, expressed to her son the hope that he would come there and build a monument to her memory on the Round Hills property (D. 195, R. 4809).

On August 29, 1917, Colonel Green arrived off Round Hills in his steam yacht, "United States." He spoke to Mr. Davis, a contractor, of his plans for Round Hills and wanted plans and estimates made for a number of things (D. 305, R. 6512).

Green said that many people misunderstood his mother, that many inhabitants of that section harbored unkind feelings toward her which he felt were unjustified, and he intended to do all he could to overcome the ill feeling in that section for his mother (D. 313, R. 6671).

In subsequent years he spoke to many people about his plans for making Round Hills into a memorial to his mother and ancestors. This was no secret; he told his old friend, Mr. Corley, that he and his sister planned to commemorate his mother's memory in some way, to establish some sort of memorial to his mother. (D. 15, R. 322). Even the public knew it, as evidenced by the letter from Ralph Hayes, director of the New York Community Trust, who wrote to Green on October 22, 1925, and spoke of this in the following language: "I have been greatly interested in reading the press accounts of your possible plans for making Round Hills into a perpetual memorial" (Fla. Ex. 361, D. 398, R. 9546).

Green told Mr. Emery in 1921 a great deal about his ancestors and the history of Round Hills, and that he was contemplating making a historical spot and wished Mr. Emery to be historian and write a series of articles in connection with various phases of the history of Round Hills and its occupants (D. 299, R. 6384).

He told Mr. Neyland, "I am doing everything I can to make Round Hills attractive as a memorial * * *" (D. 312, R. 6655).

He told Mr. Richter that he kept the Massachusetts place in remembrance of his ancestors (D. 357, R. 8414, 8427).

Green had a huge house erected on the Round Hills property which was designed and built to be a public institution, a part of the memorial idea.

He had Alfred C. Bossom, an architect, draw plans for this huge house to be erected there; he showed these plans to Mr. Davis and asked for an estimate and told him at that time it was to be one wing of a child's institute (D. 307, R. 6571).

Alfred C. Bossom, architect, knew that it was to be an institution and told his employees and associates that it was to be such. Mr. Hartwig, an architect in his employ, laid out the preliminary drawings, made the sketches, and designed the exterior of the house under Mr. Bossom's direction (D. 201, R. 7818). Mr. Bossom told him that it was to be laid out in such a manner that it could later be converted into a hospital or a public institution. Mr. Hartwig testified, "Well, I laid it out with the idea of having a general hospital plan; that is, a plan such as a hospital would be, kind of an H form, with a corridor down the center and an opportunity to lay out into sections as flexible as possible * * *" (D. 201, R. 7819).

The details were worked out for a residence after a general plan was made that seemed feasible as a hospital unit (D. 202, R. 7832).

Mr. Schlabitz, another architect in the employ of Mr. Bossom at that time, worked in designing the Round

Hills house and was told by Mr. Bossom to design it as one that was to be used as an institution at a later date and to "make it look like a big institution." (D. 180, R. 4429). That he succeeded in his purpose is apparent from a view of the property or a glance at a photograph of the Round Hills house (Texas Ex. 342, D. 327, R. 6911; N. Y. Exs. 203 to 205, inc., R. 4767, N. Y. Ex. 210, D. 194-252, R. 4773; N. Y. Exs. 218 to 220, inc., D. 252, R. 5576, et seq., Mass. Ex. 65, D. 174, R. 4351).

Edward Ardolino, the architectural sculptor on the Round Hills job, had to revise his work and make it bolder because (quoting from the testimony of the witness) "* * * Colonel Green direct to me told me that he wanted that work much more bolder than it was because it was not intended for a residence but it was intended for an institution, so we kept on working and working until we make it bolder as he wished to have." (D. 200, R. 7800).

The architect told Mr. Howes, the building contractor, that it was the intention of the owner to use the building for an institution for the public after he had lived in it for a while (D. 175, R. 4364). Mr. Howes never felt that it was being built for a home as there was no personal atmosphere connected with it in any way. (D. 176, R. 4376.)

The interior decorator worked with the architect in harmonizing the woodwork and painting. However, he did not like the woodwork as it looked too much like an institution (D. 173, R. 4324). When he called Green's attention to this, Green told him that he was going to give it to New Bedford for an old ladies' home, and when the interior decorator criticized anything, Green would

reply that it was to be an old ladies' home anyway. (D. 173, R. 4323-4328-4332).

There is some conflict as to just what type of public institution the Round Hills house was to become, but the evidence is overwhelming and uncontradicted that it was conceived, designed, planned, built and decorated to be a public institution (D. 302, R. 6441; D. 317, R. 6731; D. 27, R. 638; D. 39, R. 871; D. 51, R. 1115; D. 22, R. 521; D. 170, R. 4260).

Ultimately Green decided to make it into a museum. He had become tremendously interested in whaling, and often spoke of the fact that his ancestors had been engaged in the whaling business and that was the origin of the Green fortune (D. 299, R. 6386; D. 357, R. 8414, D. 318, R. 6749). He spoke of his intention to make Round Hills a museum on various occasions (D. 396, R. 9482, et seq., D. 315, R. 6695; D. 300, R. 6407-6408; D. 261, R. 5711; D. 196, R. 4824).

Green purchased a great deal of whaling material and a great deal was contributed by interested persons (R. 6716). This material was originally taken to the Round Hills house and some of it stored in the cellar, some in the garages, and some in the attic (R. 6716). There were enough of these materials if it had all been in one place to have formed a large whaling museum (R. 6716). In addition to this, there were miles of anchor chains laid along the driveways in the grounds of the Round Hills estate and masts of old whale ships and other paraphernalia all over the place to remind one of whaling (R. 6728-9 and R. 6966, et seq.). This was in keeping with Green's purpose of establishing a museum, and indicates that he regarded Round Hills primarily as a museum rather than as a home.

Green said he wanted to make Round Hills attractive as a memorial and with this in view engaged in various activities there in furtherance of this purpose, including radio broadcasting, whaling enshrined, aviation, scientific research and the opening of the beaches there to the public. He said he was building it to commemorate his ancestors' name, his mother's name or his father's name, one of the two of them (D. 22, R. 521). He told Miss Berglund that he would like to have the house as a memorial to the Green and Howland families so that the name would live on after he was gone, because he was the last of the Greens (D. 261, R. 5711).

The Round Hills house was always something other than a home, every part of the general plan to make Round Hills a permanent memorial to his mother and his ancestors.

EXCEPTION XXIX

> "This defendant excepts to the Master's Report because he failed to find that Green had his name removed from a stone placed near the main entrance of the Round Hills house."

During the construction of the Round Hills house, Green's monogram, "E. H. R. G." was carved in stone and delivered on the job to be placed over the main doorway (D. 202-3, R. 7832 et seq.) This had not been ordered by Green and was not known to him, but when he became aware of the fact and its proposed use, he ordered his monogram removed, giving his reason that he did not wish his name to appear upon property owned by his mother and ancestors, and that the house was

being constructed for purposes other than a home. (D. 199 to 203, R. 7784 et seq.)

EXCEPTION XXX.

> "This defendant excepts to the Master's report because he failed to find that Green's Star Island Home was the only home of which Green was the sole owner at the time of his death."

Green owned a home in Dallas, Texas, which he disposed of by sale in 1911 shortly after he moved from Texas to New York (D. 240, R. 5346; Tex. Ex. 57, D. 60, R. 1549). He maintained from shortly after his marriage in 1917 until his death, a rented apartment in New York (Mass. Exs. 50-53, D. 169, R. 4222 et seq.; D. 336, R. 4231, D. 123, 124, 169, R. 3094).

The Round Hills house in Massachusetts was built on estate property inherited jointly by Green and his sister, Mrs. Wilks, from their mother, and was jointly owned by them at all times thereafter until he died. (Fla. Ex. 30, R. 3096; D. 124, 297; R. 6344 et seq.; D. 404, R. 7879). Green's Star Island home was built by him at his own expense on land he purchased and paid for himself, and of which he was the sole owner at all times thereafter until his death. Whereas in the Round Hills house he only had a child's undivided interest (R. 7879), the Star Island home was his to do with as he pleased (R. 7880). This, we think, is an important factor to be considered in determining which of two or more homes was the principal home.

EXCEPTION XXXI.

> "This defendant excepts to the Master's report because he failed to find that on numerous occasions both in Florida and elsewhere, Green referred to his Star Island Home as 'Home'."

There are numerous instances in which Green referred to his Star Island residence as "home." In 1926, when it was being constructed, he told Judge Norfleet that he was going to make that his home, and that it would be his home from that time (D. 371, R. 8830). In 1927, the year he first occupied his Star Island residence, he wrote a letter to Oscar W. Maynard, Inc., in which he referred to it as his home (Fla. Ex. 329, D. 388, R. 9390). In 1928, in a letter to S. Daenitz he referred to "my Star Island home" (Fla. Ex. 330, D. 388, R. 9391). In another letter, written from New York in 1928, he referred to "my home on Star Island" (Fla. Ex. 331, D. 388, R. 9394). During the same year, in conversation with a Mr. Richter, at Round Hills, Massachusetts, he referred to his Miami home (D. 357, R. 8416). During the construction of an addition to his Star Island residence in 1928, he told a Mr. Brooks that he was building it for his own home; that he was building it for himself, and that he intended to live there the rest of his life (D. 368, R. 6888-9). He showed his plans for his Star Island residence to a Mr. Newington of New Bedford, and stated that he was building this Florida home, which was to be his permanent home and where he expected to wind up his days (D. 91, R. 2761). On one Sunday afternoon in 1929, while viewing his Star Island home across the bay from the Venetian Causeway, he referred to his home and, in pointing out its beauties, expressed his

admiration with considerable sentiment (D. 358, R. 8417-8). In conversation with a Mr. Keuling of Miami, he referred to his Star Island "home" (D. 357, R. 8401). He told his friend, Mr. Neyland, of South Dartmouth, Massachusetts, that he was building a Florida home (D. 316, R. 6722-3). In talking to a Mr. Bradford of Fairhaven, Massachusetts, he referred to Florida as "down home" (D. 90, R. 2733-7). In 1930, in discussing the need for a park in one section of Miami, he referred to his Florida home (D. 353-4, R. 8334-5).

He expressed his feeling toward his Star Island home in this way:

> "Certainly I will do something—you know this is my home, too—you have been visiting me long enough over there to know it is my home as well as yours—if you people will get that park built, I will build you a swimming pool." (D. 353-4, R. 8334-5.)

He objected to liquor being served at parties in his Star Island home, stating his reason that the home should be kept sacred (R. 8253-4). In 1931, in a letter to the Chief of Police, he referred to his Star Island home (Fla. Ex. 332, D. 388, R. 9395). During the same year, in a letter to the City Manager of Miami Beach, he thanked him for the interest taken "in my Star Island home" (Fla. Ex. 333, D. 388, R. 9396). Again, in conversation in 1931 or 1932, in admiring the beauty of his home and its surroundings, he said,

> "Is not that beautiful? That's God's country. What more can a man ask than to live and

have a home in a place like this?" (D. 374, R. 8858).

In another letter to the Chief of Police of Miami Beach, he referred to his Star Island home (Fla. Ex. 335, D. 389, R. 9400), and the same year, 1932, in a letter to Mr. Wall, President of the Miami Beach First National Bank, he referred to "our home at Star Island" (Fla. Ex. 336, D. 389, R. 9402). Upon his annual return to Florida, it was his usual expression that he was glad to be back home (D. 359, R. 8440-1; D. 368, R. 8715; D. 373, R. 8850). In 1933 he told a Mr. Barrett, an old boyhood friend, of his Florida home. (D. 385, R. 9331-41). In 1934 he told one of his old Texas friends, a Mr. Tucker, that he had his home there in Florida, where he expected to live the rest of his days D. 372, R. 8842). In the fall of 1935, at New Bedford, Massachusetts, Green referred to his home in Florida and stated that he would be glad to get back there and to get away from Massachusetts (D. 361, R. 8496).

Surely these expressions are important in arriving at Green's attitude toward, and affection for, his Star Island home in the determination of which of his homes, at the time of his death, if he had more than one, was his principal home.

EXCEPTION XXXII.

"This defendant excepts to the Master's report because he failed to find that no income tax was assessed against Green by the Commonwealth of Massachusetts."

Massachusetts has an income tax law. It also has a very able Commissioner of Corporations and Taxation, whose duty it is to administer and enforce that law. That Commissioner is a lawyer and a man of broad experience, who stands high as an authority on matters of taxation. In 1928, acting on information which led Commissioner Long to believe that Green was subject to the Massachusetts Income Tax law, he requested and was granted an interview with Green, with the view of procuring from Green a return for income taxes due the Commonwealth of Massachusetts. In that interview had at Round Hills, Green insisted that he was a legal resident of Texas and not subject to the income tax law as an inhabitant of Massachusetts. He stated that he did not wish to regard himself as a legal resident of Massachusetts. In this interview the Commonwealth of Massachusetts, acting through its efficient tax officer, was convinced that Green was not subject to its income tax law as an inhabitant thereof, and no effort was thereafter made to procure from Green an income tax return, or to compel the payment to that Commonwealth of an income tax, until sometime in the year 1936 when a notice addressed to Green was sent to South Dartmouth, which Green never saw and which was opened and read for the first time after Green's death by the administrator of Green's estate, although this diligent tax officer had been in office prior to the building of the Round Hills house and the developments there, and has continued as such officer ever since, and was at all times since 1928 in possession of the same information that prompted him to request the interview which convinced him that Green was not an inhabitant of Massachusetts, nor subject to its income tax law (D. 338, R. 7065-7, and 7165).

This is important to be considered in arriving at a determination of whether Green's habits of living were such as to justify the conclusion that Round Hills was his principal home. Mr. Long, the able, efficient and diligent tax officer in the discharge of his official duties in administering the income tax law of the Commonwealth, visited the Round Hills place, and from his interview with Green on that visit was obviously convinced that Green was only a summer visitor as distinguished from an inhabitant of the Commonwealth, and if that conclusion was justified by what he saw and learned on that occasion, or in any other way in the discharge of his official duties, then it cannot be said that Green's habits of life were such as to justify the conclusion that Round Hills was his principal home.

EXCEPTION XXXIII.

> "This defendant excepts to the Master's report because he failed to find that Green's attorneys advised him that his spending more than six months a year in Massachusetts did not make him liable to Massachusetts for an income tax, and that he did not spend thereafter more than six months in Massachusetts during any one year."

Green was advised by his personal attorney in New York in either 1918 or 1919 that he was not taxable under the Massachusetts Income Tax law (Mass. Ex. 71, D. 215-6, R. 5100). In 1930 Mr. Bullard, an attorney of New Bedford, advised Green that the Massachusetts income tax Act had been amended in a way as to permit him to come to Massachusetts earlier than July 1st

without being liable for the payment of an income tax there (Mass. Ex. 287, D. 225, R. 5175). And his personal attorney, Mr. Pierson, again advised him that he saw no reason why he should not go to Round Hills in June rather than July. (Mass. Ex. 288, D. 225-6, R. 5178). Notwithstanding this legal advice, Green never went to Massachusetts before July 1st until the year 1934.

This shows that it was not altogether for the purpose of avoiding liability to the Income Tax Law of Massachusetts, that he did not go there earlier each year, and is important to that extent.

EXCEPTION XXXIV.

"This defendant excepts to the Master's report because he failed to find that Mrs. Wilks paid one-half the taxes on the Round Hills house except for the first few years after its completion."

From the time of the death of Hetty Green until the Round Hills house was built, the taxes on the Round Hills property were paid from the Hetty Green estate. Beginning about the time of the completion of the Round Hills House and for only a very short period, the taxes were paid by Green alone. After that they were paid one-half by Green and the other half by his sister, Mrs. Wilks. This is important as showing Green's realization of the fact that he owned only a one-half undivided interest in the estate property including the Round Hills house, and should be considered as a factor in determining whether Green properly regarded that as his principal home over the Star Island home of which he was the sole owner.

EXCEPTION XXXV.

"This defendant excepts to the Master's report because he failed to find that when Green left Round Hills at the close of the summer seasons, the house was closed, the doors and windows were protected by storm doors and shutters; the furniture and pictures were covered; the silverware, chinaware, and linen put away; the draperies covered, and the master's kitchen closed."

When the Greens left Round Hills at the close of the summer season, the house was closed, the doors and windows were protected by storm doors and shutters, the furniture and fixtures were covered, the silver, chinaware and linen put away, the draperies covered, and the master's kitchen closed. The house was kept heated to prevent damage from dampness and pipes freezing (D. 94-5, 243 and 251, R. 2796-9, 5383, 5539-40). Many of the household servants were used in both the Round Hills and Star Island houses, but it is just as fair to say that they were carried from Star Island to Round Hills and back to Star Island as to say, as the Master did, that they were carried from Round Hills to Star Island and back to Round Hills.

EXCEPTION XXXVI.

"This defendant excepts to the Master's report because he failed to find: (a) when Green went to Texas he was sent by his mother to attend to her business; (b) when Green moved from Texas to New York in 1911, he was

called back by his mother to attend her business; (c) that when he later went to Massachusetts, it was in response to his mother's request that he there build a monument to her memory."

About 1892 or 1893 Green was sent to Texas by his mother to manage and operate a short line of railroad which was owned by his mother and later known as the Texas-Midland Railroad (D. 13, 24, 30 and 62, R. 297, 578, 674, 1413 and 1731).

In 1910 he was called back to New York by his mother to assist her in the management of her vast fortune. In 1911 he again returned to New York at the call of his mother to assist her in her business affairs, at which time he moved his housekeeper and his household goods and effects from what had been his home in Dallas, Texas, to New York. Prior to the death of Hetty Green she expressed to her son the hope that he would go to Round Hills and build a monument to her memory on the estate property, in an effort to overcome the unfavorable impression she had left in that community by her manner of living, and it is fair to assume that his later activities there were in response to her request, actuated by his love for his mother and the realization that he was using the money she had accumulated. Certainly a dutiful son could not have done less. If this conclusion is justified from all the facts and circumstances, and we urge that it is, then his activities there were due to his affection for his mother rather than his regard for the place as a home. This, we think, is important to be considered in connection with the question as to which of his homes, if he had more than one, was his principal home.

EXCEPTION XXXVII.

"This defendant excepts to the finding of the Master stated on page 48 of the Master's report, as follows:

> 'In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile; and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention—Green did nothing * * *"

because: (a) the proposals to change his legal residence in the particular instances were made for the purpose of avoiding taxes and had no reference to a change of domicile; (b) Green could not have changed his domicile from Texas in 1931 or 1933 for the reason that long prior thereto his domicile had been abandoned and established elsewhere; (c) the said finding is not proper to be considered against Florida in the determination of Green's domicile at the time of his death; (d) the Master failed to find that the incidents stated in said finding should be given no weight in the determination of Green's domicile."

In the first place, both the suggestion from Allen, his Texas friend, and from Pierson, his New York attorney,

had reference to an imaginary change for the purpose of tax avoidance rather than a real change. Green could not either in 1931 or 1933 have changed his legal residence or domicil from Texas to Florida, because at that time neither his legal residence nor domicil was in Texas. He had moved from Dallas, Texas, to New York in 1911, and had not lived in Terrell, Texas, since long prior to 1911, and had not even paid room rent there since 1914. He had had every opportunity to return to Texas and re-establish a home and domicil there prior to the incidents here stated, but had not elected to do so. The correspondence between Allen and Green and between Green and Pierson clearly indicates that the thing they were all interested in was the matter of evading the payment of an income tax under proposed legislation in Texas in the years 1931 and 1932, and that they were not thinking about home in its true sense. If Green had taken any action in response to the suggestion of his friend, Allen, and the advice of his Attorney, Pierson, it would not have been to abandon Texas as his domicil, but merely to declare himself a legal resident of Florida. The Master has elsewhere found that his many declarations as to legal residence were not to be considered, as they were in conflict with his manner of living, and it is mere argument to say that he did nothing to make a formal announcement of his intention, and the Master should not have used this argument against Florida any more than he should have used it against Massachusetts. For if his domicil was in Texas in 1931 and 1933, it was not then in Massachusetts, and there is nothing in the record to justify the conclusion that it was after that time moved from Texas to Massachusetts.

EXCEPTION XXXVIII.

"This defendant excepts to the conclusion stated on page 51 of the Master's Report, as follows:

> 'His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return.'

because: (a) he failed to find that every act of Green's from the time he moved from Texas in 1911 was inconsistent with any intention to return thereto; (b) the residence of Green in New York for a number of years after returning there was as permanent as it had been in Texas."

There is nothing in the record in this case from which it might reasonably be presumed that Green, while living in New York from 1911 intended to return to Texas and re-establish his home there, other than mere declarations which the Master has correctly found to be unreliable in a consideration of the question of domicil. When he left Texas and moved back to New York, he disposed of his every business enterprise except the railroad, which was owned by his mother, and disposed of his home in Dallas and all of his real estate holdings that could be sold, and as an indication of his attitude toward the question of residence, and as a tacit admission on his part that he was severing all connections with Texas, he resorted to the subterfuge of renting a room

in Terrell, Texas, where he had not lived for several years, and which he never saw, and about which he joked with his friend, Mrs. Stafford. If he had any intention of returning to Texas to live, he had every opportunity to do so after his mother's death and after he came in possession of his share of her estate. After 1921 Texas offered certain health advantages, and his Texas friends, including Dr. Buie, endeavored by every argument at their command to persuade him to establish a home there, but he refused. Obviously, he had his own reasons for not going back, and the fact that he did not return when he had every opportunity to do so, and no reason to prevent him from re-establishing a home there, justifies the conclusion that he never intended to return to make Texas his home after leaving there in 1911.

There is no more justification for referring to his residence in New York as temporary than that in Texas. He was sent to Texas by his mother in the first instance, and remained there under her control and domination until she saw fit to call him back to New York, when he obeyed her call and returned to New York just as he had gone to Texas to serve her, and so remained in New York until her death, serving her just as he had remained and served her in Texas, and continued to live in New York after her death and maintained living accommodations there throughout the remainder of his own life. It is, therefore, fair to conclude that his residence in New York was as permanent as it had been in Texas.

EXCEPTION XXXIX.

"This defendant excepts to the conclusion stated on page 53 of the Master's report as follows:

> 'To him domicile was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line.'

because the said conclusion is argumentative."

The objection to the conclusion here excepted to is that it is argumentative. It is doubtful if Green in fact gave any thought to domicil. Few people do. Man establishes his home and the law fixes his domicil. It is immaterial whether Green was interested in making a home for posterity, but the question of importance here is whether he was interested in making a home for himself, and if he had more than one home, which was his principal home.

EXCEPTION XL.

"This defendant excepts to the conclusion stated on pages 53 and 54 of the Master's report as follows:

> 'He did have some unformulated notion of leaving a memorial to his mother, his sister and himself, and the granite edifice at South Dartmouth on the land that had been in the family for generations surrounded by maritime antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, formed to him the most appropriate memorial he could leave

after death, and the most permanent home he could enjoy while living,'

because the same is argumentative."

The only unformulated notion or plan Green had in leaving Round Hills as a memorial to his mother was the character of use to which it should be devoted. From the time of his first visit to Round Hills in August, 1917, until his death, his every act indicated that of memorializing his mother, and his plans were formulated and executed around that central thought. Its use as a residence was of secondary consideration. Not only was the house planned and built for a public institution, but many of the things on the outside were public in character. The aviation field, the radio station, the research work by M. I. T., Whaling Enshrined, were for the use of the public, and even his bathing beach became so public that many thousands of people visited it daily. These are not the things with which a man surrounds his home.

On the other hand, the Master elsewhere found that Green's Star Island home was constructed of the best materials and designed for comfort and beauty. That there was nothing about it to suggest anything but an unusually fine private residence. That it was elaborately furnished with specially built furniture manufactured by the company that had made the Round Hills furniture and by decorators in New York City; that the rugs were more beautiful and expensive than those at Round Hills and the general effect more homelike (see page 45 of Report.) Notwithstanding this, the conclusion here excepted to is used as an argument to support the finding that Green's domicil was in Massachusetts. We think

this argument could with more reason be applied against Massachusetts and in favor of Florida.

EXCEPTION XLI.

"This defendant excepts to the conclusion stated on page 54 of the Master's report, as follows:

> 'There is no sufficient evidence to show that Green ever intended to make New York his permanent home,'

because: (a) it appears that this conclusion is predicated in part on a statement or declaration of Green whereas in other parts of his report, the Master finds that Green's declarations being in conflict with his manner of living, are not sufficient on which to determine domicile; (b) the conclusion is also in part founded upon the fact that Green made no effort to become a voter in New York, and that he owned no real estate there except what he acquired as a result of mortgage foreclosures, and paid no personal or income tax in New York."

The support for this exception depends on what evidence is required to prove intent. If Green's intent is to be determined by his declarations of residence in Texas, then perhaps the Master is correct in stating that there is no sufficient evidence to show that Green ever intended to make New York his permanent home. But if his intent is to be judged by his manner of living, then the record is replete with evidence to show that

he intended to make New York his permanent home. Intent to make permanent one's home means present intent, that is to say, a man establishes his home with the present intention of making it permanent, as distinguished from temporary, and with no intent at that time of changing. When Green moved from Texas to New York in 1911, he established himself there in a home just as he had been established in his home in Texas, with his same housekeeper, and employed house servants and used the same household furniture that he had used in Texas while living there. His manner of living in New York indicates the same intention of permanency with which his Texas home was established and maintained, and there is nothing to justify the conclusion that he did not at that time intend to continue making his home in New York. If the conclusion here excepted to is in any way based on Green's failure to become a voter in New York, then the same argument would apply against Massachusetts. The argument that he paid no tax in New York would also apply against Massachusetts. The only home Green had between 1911 and 1921 was in New York, and if the law fixes domicil at a man's home, then Green's domicil during that period was in New York.

EXCEPTION XLII.

"This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

> 'In a sworn statement to the tax officials of New York, he declared that he was not and never had been a resident of New York,'

because the Master used the said statement made by Green for tax avoidance as a reason for finding that Green never intended to make New York his permanent home while the Master failed to apply like statements made by Green against the claim of Massachusetts as to Green's domicile."

It is true as stated in the Master's report that in a sworn statement to the tax officials of New York, Green declared that he was not and never had been a resident of New York, but it is also true that he stated to the Commissioner of Corporations and Taxation of Massachusetts that he was not and never had been a resident of Massachusetts. Both statements were made for the purpose of defeating the efforts of public tax officials in the discharge of their sworn duty, and the two statements had the desired effect. The statement in both instances were untrue, because in fact he was a resident at the time the respective statements were made in those places. A man is a resident wherever he resides, and he need not even be a citizen of the place of his residence, and it does not follow that his home is where he resides. There can be no doubt as to the purpose of all of the statements so made by Green, and it seems hardly fair to use one against New York and not use the other against Massachusetts.

EXCEPTION XLIII.

"This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:

> 'This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island Home,'

because the Master failed to find that whatever domicile Green had prior to the time he built and occupied the Star Island Home, such domicile was abandoned and his Star Island Home became and was his domicile prior to and at the time of his death on June 8, 1936."

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

EXCEPTION XLIV.

"This defendant excepts to the conclusion stated on page 55 of the Master's report wherein he concluded the true criterion to be:

> 'The true criterion, therefore, for determining domicile where there are two homes seems to be the order of acquisition, etc.'

because the Master obviously failed to apply the further principle of law as follows:

> 'Where a man has two homes, and is domiciled in the earlier he may by a mere change of attitude toward his latter home come to have a principal home and therefore a domicile there.' "

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

EXCEPTION XLV.

"This defendant excepts to the conclusion stated on pages 54 and 55 of the Master's report as follows:

> 'But under the authorities, the adoption of a changed location or a subsidiary or secondary home for the sake of health does not constitute the abandonment of the old and acquisition of a new domicile,'

because the Master assumes as a basis for said conclusion that the establishment by Green of his Star Island Home was subsidiary or secondary to his Round Hills place which presumption and conclusion is contrary to the ultimate fact established by a preponderance of the evidence in the case, and further because the Master assumes as a basis for said conclusion that the establishment of the Star Island Home was primarily for the sake of health, and concludes that a change of domicile cannot be induced by a consideration of health, which conclusion is contrary to the established principle of law."

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

EXCEPTION XLVI.

"This defendant excepts to the statement or finding on page 55 of the Master's report, as follows:

> '• • • never voted there, never paid any intangible or income taxes in Florida, and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas,'
>
> because the Master used the facts that Green never voted nor paid any intangible or income taxes in Florida, and the statement that as late as in 1935 in a judicial proceeding in Florida, he testified that he was a resident of Terrell, Texas, as a basis for concluding that Green was not domiciled in Florida at the time of his death, and did not apply the fact that Green never voted in Massachusetts nor paid any income taxes there as a reason for finding that Green was not domiciled in Massachusetts; and further, because Florida did not have at the time of Green's death, and never had had, an income tax law."

It is true, as stated by the Master and which forms the basis of this exception, that Green never voted nor paid any intangible or income taxes in Florida, and as late as 1935 in a judicial proceeding in Florida testified that he was a resident of Terrell, Texas. It is likewise true that he never voted nor paid any intangible or income taxes in Massachusetts, and in 1928 stated that he was not a resident of Massachusetts. His testimony in the judicial proceeding in Florida in 1935 that he was a resident of Terrell, Texas, was as much against Massachusetts as it was against Florida, yet these facts are used by the Master only in his argument against Florida and in support of his finding of domicil in favor of Massachusetts. The extent to which this argument in

the Report of the Master is strained against Florida is seen in th statement that Green paid no income taxes in Florida. There is nothing in the record to show that Florida had an income tax law at any time during Green's residence here. As a matter of fact, Florida did not have during that time and has never had an income tax. We quote from the Constitution of Florida, which prohibits the levy of an income tax on its residents or citizens, which inhibition is found in Article IX, Section 11, of the Constitution of Florida, which was submitted by the Legislature of 1923 and adopted at the General Election in 1924, and has ever since been in effect, as follows:

> "Section 11. No tax upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of Five Hundred ($500.00) dollars. (Additional section, Senate Joint Resolution 135, Acts 1923; adopted at General Election, 1924.)"

So Green could not have paid an income tax to Florida had he desired to do so. This illustrates to some extent the weakness in the support of the ultimate finding and conclusion as to Green's domicil.

EXCEPTION XLVII.

"This defendant excepts to the Master's report because he failed to find that Green con-

sistently on all occasions declared that he was not a resident, inhabitant, or citizen of the Commonwealth of Massachusetts."

The reasons for this exception are found in our discussion of the last preceding question. Consistency requires that the same rule be applied alike in the consideration of all the facts shown by the record in this case, and if the argument excepted to in the last preceding exception is proper to be considered against Florida, then to be consistent, the Master should have considered and found that Green consistently, when the occasion presented itself, declared that he was not a resident, inhabitant, or citizen of the Commonwealth of Massachusetts.

EXCEPTION XLVIII.

"This defendant excepts to the conclusion stated on page 55 of the Master's report that Green did not attempt to make Florida his own country because the same is in conflict with the ultimate fact established by a preponderance of the evidence."

The statement that Green did not attempt to make Florida his own country is again argument, unsupported by and contrary to the established facts of this case. We have already shown, and the Master found, that he bought property and built and furnished a home here, which was more homelike in general effect than the Round Hills house. He invested money in and was connected with business activities in Florida, and that was not true in Massachusetts. He identified himself with

the community life in its various phases, and contributed rather liberally to many of the community projects, civic, philanthropic, charitable and religious. He selected and joined many of the worthwhile organizations in the community of his Florida home, and continued his membership until the end. He was interested in good government, as shown by his membership in the Committee of One Hundred, and in the Dade County Tax Relief Association. Although he did not vote here, he contributed to a fund to assist in electing one who was thought to be the best available man as Mayor of Miami Beach where his Star Island home was located.

Surely these activities indicate an attempt to make Florida his own country.

EXCEPTION XLIX.

"This defendant excepts to the statement contained on page 55 of the Master's Report as follows:

> 'Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions.'

because: (a) the said statement is not supported by the evidence; (b) the acts of Mrs. Green subsequent to Green's death can not be used to determine Green's domicile at the time of his death."

If the statement that Star Island was left in charge of a caretaker has any probative value in determining domicil, then it is in favor of Florida and should have

been so accepted by the Master, because it shows Green's interest in his Star Island home to the extent of employing caretakers to look after and care for it in his absence. As a matter of fact his Star Island home was in the very best of hands during his absence, and was kept in A-1 condition at all times, and this is indicative of his attachment for the place. But if the statement that it was left in charge of a caretaker is to be used against Florida as the Master did so use it in his consideration of that fact then the same argument would apply against the Round Hills house, for that, too, was left in charge of a caretaker when Green left there at the close of each summer season.

If the statement that Star Island was only visited by Mrs. Green to remove some of her personal belongings relates to a time subsequent to Green's death, then such statement is utterly without support in the record of this case. It is a fact shown by the record that she did, subsequent to his death, remove from the Star Island home some of her personal possessions, but there is nowhere in the record any evidence to the effect that she only visited there for that purpose.

Had it been a fact that Mrs. Green only visited Star Island after his death to remove some of her personal possessions, such fact could have no value in determining Green's domicil prior to and at the time of his death, and should not have been given any consideration by the Master in arriving at his finding and conclusion as to domicil, any more than he should have used as an argument against Massachusetts the fact that Mrs. Green spent only a short time in the Round Hills house after Green's death. Again the weakness of the argument in

support of the ultimate finding and conclusion becomes obvious.

EXCEPTION L.

> "This defendant excepts to the conclusion stated on page 56 of the Master's report, as follows:
>
> > 'Round Hills was not only the earlier home but as the findings of fact show, it was the principal, predominant and permanent home when compared with the Star Island residence.'
>
> because the said conclusion is contrary to the ultimate fact established by a preponderance of the evidence in this case."

It is a fact that the Round Hills residence was established prior to the Star Island residence, but its establishment was subsequent to Green's location in and establishment of his home in New York. And if domicil is to be determined alone on the fact as to which of more than one residence or home was first established, then the decision must be in favor of New York because he maintained a residence in all three places continuously from the time of their respective establishment. We have undertaken to point out in the discussion of these exceptions those incidents in Green's life which we think lead to the unmistakable conclusion that of all Green's residences, the Star Island residence was his principal, predominant and permanent home at the time of his death. It had all the attributes of a real home, to the exclusion of every other consideration, and this statement

cannot apply to any of his residences other than his Florida home. His every habit of life was in favor of the conclusion that he came to regard Florida as his principal home. There was where he got more pleasure and comfort of living in his latter years, and the things that had once interested him in and attracted great crowds to Round Hills now ceased to interest him but on the other hand caused him annoyance. During the last few years of his life in Massachusetts he seldom went out, even to ride, and stated to his nurse as a reason for not going out oftener that the people worried him. He enjoyed having people see his beautiful Star Island gardens, but they were not allowed the freedom of his grounds as was the case at Round Hills, indicating that he had tired of the public character and the picnic crowds that had given the Round Hills place more the appearance of a public resort than a home. In Florida he went out daily and enjoyed the outdoors, and enjoyed stopping and talking with friends and acquaintances. The evidence shows unmistakably that at certain periods of his life he underwent a change in his attitude toward things. The reasons for those changes are immaterial. The material inquiry is as to whether the changes caused him to finally have more attachment for and to regard his Star Island home as his principal home. Domicil may be changed for any reason or for no reason. It is immaterial whether his change of attitude was produced by his age and the condition of his health, or whether he had in the course of natural events, just tired of the crowd and noise of other places, and sought a home on a restricted residential island in Biscayne Bay for the quiet and peace that could be enjoyed, free from those things which had theretofore proven unsatisfying.

If Green had returned to Texas in 1923 instead of coming to Florida, and had there done the same things and lived exactly as he lived in Florida, we believe beyond the shadow of a doubt that the Master would have found that his domicil at death was in Texas, and that such finding would have been sustained in fact and in law. If the same facts would have sustained a finding of domicil in Texas where he had abandoned his domicil long prior to coming to Florida, then the same rule applied to those facts must and does fix his domicil in Florida at death.

EXCEPTION LI.

"This defendant excepts to the statement or conclusion on page 56 of the Master's Report as follows:

> 'Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out.'

because the circumstance here relied on by the Master is too remote to be entitled to any weight in the determination of Green's domicil."

The statement here excepted to that Mrs. Green looked forward to the time when she might be left alone and had selected a site and had considered plans for a cottage on the South Dartmouth estate is perhaps the weakest of all the argument advanced in the Master's report in support of his finding in favor of Massachu-

setts. It was on September 8, 1919, that Mrs. Green talked about building a cottage on a separate hill at Round Hills (D. 307, R. 6551). Again in the early part of 1920 she had plans made for such a cottage and got an estimate on the cost, but gave it up (D. 308, R. 6581). Green said in 1924 that Mrs. Green would like to have a small house up near Smith Neck Road and use the main house for a museum. (D. 315, R. 6719). But the small house was never built. At one time Green told the witness Berglund that he had given Mrs. Green a lot if she wanted to build a house and have her relatives come and live there (D. 261, R. 5712). But there is no record evidence that any property in or about Round Hills or South Dartmouth was ever deeded to Mrs. Green. All of this talk took place before the Round Hills house was built, and is too remote to be considered in favor of Massachusetts or against Florida.

EXCEPTION LII.

"This defendant excepts to the statement or conclusion on page 57 of the Master's report as follows:

'Both were homes, but Round Hills was the earlier, predominant, and principal home,'

because said conclusion is contrary to the ultimate fact established by a preponderance of the evidence."

The conclusion here excepted to presents a legal question and will be discussed as such later in this brief.

PRINCIPLES OF LAW WHICH SUSTAIN FLORIDA'S EXCEPTIONS TO THE MASTER'S REPORT AND FIX GREEN'S DOMICIL IN FLORIDA AT THE TIME OF HIS DEATH.

Most of our Exceptions present questions of fact and have been discussed in relation to the evidence. In our endeavor to demonstrate the unsoundness of the reasoning by which the Master arrived at his ultimate conclusion, a few of the Exceptions have been reserved for discussion as presenting questions of law.

EXCEPTION XLIII.

> "This defendant excepts to the conclusion stated on page 54 of the Master's report as follows:
>
> > 'This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island Home.'
>
> because the Master failed to find that whatever domicile Green had prior to the time he built and occupied the Star Island Home, such domicile was abandoned and his Star Island Home became and was his domicile prior to and at the time of his death on June 8, 1936."

It has been shown that Green sold his home in Texas and disposed of his business interests and moved away in 1911. We have also shown that there is no evidence

in the record to fairly support the proposition that Green ever intended to return to Texas to live, but that on the contrary his every act indicated that he did not intend to return there to live.

In *Kennan "On Residence and Domicile,"* page 197, it is said:

> "Among the more common indicia of intent to abandon a particular place are such facts as that a person has disposed of his property and business interests or removed his family."

In *North Yarmouth v. West Gardiner,* 58 Me. 207, 4 Am. Rep. 279, it was held:

> "It seems plain, that when all the elements which constitute a home have ceased, that home itself would cease also."
>
> "What can be more complete annihilation of home, in the case of an intelligent person, than his departure, leaving nothing behind indicative of a home, without any intention of returning thereto."
>
> "It is difficult to conceive of a man, leaving his home, the place which more nearly concerns his welfare than any other, without any intention as to whether he will or will not return. And in the absence of an intention to return, it is quite difficult to conceive of its being a home to him."

Again *Kennan,* at page 259, states:

> "Perhaps no case has illustrated the difference between the definite and indefinite intention

to return more clearly than United States v. Knight where the following language is used: 'A change of abode with present intent to return to the former abode upon the contemplated happening of an event in the indefinite future, as business dispatched, health restored, employment ended, employer's recall, is not a change of residence or domicile. If, however, a person removes to another place with present intent to abide there indefinitely, and not merely until the contemplated happening of a contingency as aforesaid, he abandons his old residence or domicile in the place to which he removed, notwithstanding he may entertain a vague, floating intent or hope to sometime return to the former place. The distinction and difference are that in legal contemplation the first case is a present intent to return and independent of future determination; whereas, the second case is a mere present expectation or hope to return, and wholly dependent upon future state of mind. The latter, unlike the former, does not rise to the dignity of that 'present intent' which is a vital element of residence or domicile.' "

In re: *Dorrance's Estate*, 309 Pa. 152, 163 Atl. 303, Headnote No. 5:

"Expressions of desire to retain a domicile in one state cannot prevail over the intent to make a new home in another state as manifested by actual removal thereto, and manner of living,"

and that principle is applicable here.

In *Dickinson v. Brookline*, 181 Mass. 195, 196; 63 N. E. 331, in an opinion by Mr. Justice Holmes, the Supreme Judicial Court of Massachusetts said:

> "When you intend the facts to which the law attaches a consequence you must abide the consequence whether you intend it or not."

The record establishes the fact that Green moved from Texas to New York in 1911, after abandoning his home there and removing all of his personal effects, and established a place of residence in New York where he actually resided as he had theretofore resided in Texas, and which for many years was the only home he had. Applying the principle of law just stated by Mr. Justice Holmes, he intended the act of removing from Texas to New York and of there establishing his residence and home, and he must abide the consequence of the law which fixed his domicil where he had his only home. He had no intention of removing from New York at that time, but on the contrary set about to establish himself in the community, became a part thereof, and by his every act showed that he intended New York to be his home.

In *Restatement of the law of Conflict of Laws*, at page 38, it is stated:

> "The intention required for the acquisition of a domicil of choice is an intention to make a home in fact, and not an intention to acquire a domicil."

This legal principle is illustrated as follows:

> "A person sometimes desires to have his domicil in a certain place, in order to get the bene-

> fit of one or more of the legal consequences of having a domicil there, but does not wish to change his home to that place; this desire to have a domicil in a certain place has no effect in fixing his domicil there. So too, the desire to retain an old domicil is not controlling if in fact a new one had been acquired under the rules stated in Sections 14 to 25."

Beale in his treatise on the *Conflict of Laws*, page 149, says:

> "It is not enough that a man desires to acquire or to keep a 'legal residence' or 'legal domicil'; the intention necessary for the acquisition of a domicil is an intention as to the fact, not as to the legal consequence of the fact. A man's home is where he makes it, not where he would like to have it."

Again on page 150:

> "It is clear, therefore, that a man cannot retain or obtain a domicil, apart from his home, either for the purpose of voting or of paying taxes."

Green maintained a place of residence in New York as long as he lived.

The Round Hills house at South Dartmouth, Massachusetts, was completed in 1921, and from that time on until 1935 Green resided a part of each year there. He also established a place of residence in Florida, which he occupied in 1927, and in which he resided a portion

of each year until his death. Green was in the position of having three places of residence, each capable of being a home.

In case of multiple residence, we believe that the emphasis should not be placed on abandonment but rather on the intent to make the new place the permanent or principal home, which, coupled with actual residence, would constitute a change of domicil.

In *Restatement of the Law of Conflict of Laws*, page 25, home is defined:

> "A home is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of the relation between the person and the place."

And some of the important factors in determining home are set down as follows:

> "1. Its physical characteristics;
> 2. The time he spends therein;
> 3. The things he does therein;
> 4. The persons and things therein;
> 5. His mental attitude toward the place;
> 6. His intention when absent to return to the place;
> 7. Elements of other dwelling-places of the person concerned."

Keenan at page 199 of his treatise, says:

> "This intention of the parties * * * is to be gathered from their acts, declarations, and from a variety of other circumstances."

And at page 63:

> "* * * there is no one fact or criterion which always and invariably betokens domicile, but the intention of the individual as to his residence must be deduced or inferred from a wide range of acts, circumstances and declarations which the courts have recognized as more or less significant in that connection."

In *Smith v. Croom*, 7 Fla. 81, text 151, an early Florida case involving the question of domicil, it was said:

> "It must readily occur that no compass of language can ever fully comprehend the variety of acts which shall in any given case tend to prove the establishment of a domicil; for these acts will ever be as various as are the occupations of men or the emotions of the mind."

Green resided in his Star Island home from the time it was first occupied in 1927 a portion of each year until he died, and the time spent there progressively increased from year to year; and we think the record clearly establishes the fact that he considered Star Island not only as a permanent home but as his principal home.

The determination of domicil by reference to certain facts is not so much a matter of establishing the facts themselves as it is in weighing the relative significance and importance of those facts as related to each other. For, as is said by Kennan, page 64:

> "It depends not upon proving particular facts, but whether all the facts and circumstances taken together, tending to show that a man has

> his home or domicile in one place, overbalance all the like proofs tending to establish it in another; such an inquiry, therefore, involves a comparison of proofs, and in making that comparison there are some facts which the law deems decisive unless controlled and counteracted by others still more stringent."

Green came to Florida, built a beautiful home which was strictly a private home, and only the best materials were used in its construction. He developed it year by year until it was one of the finest homes in the community, and it was kept in A-1 condition until Green's death.

He was very proud of his home, and had his monogram, crest and coat of arms worked into tile and concrete there.

The furnishings were ultra, and individual designing was reflected in every room, and the landscaping was the finest in the entire area.

The time spent in Florida increased year by year until he grew to spend more time in Florida than in any other place.

Green with Mrs. Green ate, drank, slept, entertained their friends, and generally lived in their home on Star Island, and did those things ordinary citizens having a home would do.

Green became interested in and a part of nearly every phase of the community life, business, social, civic, political, charitable and religious.

He was considered by the community as one of their outstanding citizens and was granted many considera-

tions on that basis. He too considered himself as a citizen.

It has heretofore been shown that self-serving declarations and declarations in conflict with the acts of the party should be given no weight in the determination of domicil; however, spontaneous declarations tending to show the state of mind and therefore the intention of the individual, particularly where they are corroborated by acts and circumstances, should be carefully considered and given grave weight.

Kennan at page 71 et seq., states:

> "In general it may be said that the declarations should relate to acts from which intention can be inferred rather than to the intention itself. For one to make the naked assertion that his domicile is in a certain place is simply to state a legal conclusion. To announce an intention of making one's home in a certain place for an indefinite period is stronger but by no means conclusive evidence. Such a declaration should relate to or be supported by specific acts or circumstances which tend strongly to corroborate the statement."

> "It is generally conceded that declarations which indicate the state of mind of the declarant naturally have a tendency to show intention and are therefore admissible. 'Declarations of a person accompanying a change of his abiding place have always been held competent to explain the change as a part of the res gestae; but declarations in such cases are often admissible on a

broader ground than as a part of the act of removing from one place to another. The intention of the person removing is competent to be proved as an independent fact, and anything which tends to show his intention in making the change may be introduced, if it is free from objection in other particulars. The intention may be inferred from acts and conduct, and conduct which tends to show the intention is competent for that purpose. Declarations which indicate the state of mind of the declarant naturally have a legitimate tendency to show intention.'

"Declarations may always be received in connection with any acts or circumstances from which intention may be readily inferred. This principle has been frequently announced in connection with pauper settlements. Where the statements are supported and illustrated by actual facts, the declarations are held to be admissible."

" 'In many cases the identity of the permanent home is to be fixed by facts and circumstances, as mere expression of intention is not always controlling; but when the expression of intention to select a permanent residence at a designated place harmonizes with the facts and circumstances that serve to illustrate the intention, ... there is not much room for dispute as to the place of residence.'

" 'It has been well settled by a series of cases in this Commonwealth that, as a question of domicile usually involves not only actual residence, but the intention and purpose with which

such residence is accompanied, it is competent to give in evidence declarations of intention accompanying the acts of the person whose domicile is to be proved.' 'Continuous uninterrupted declarations, especially at times not suspicious, accompanied by the fact of residence, the removal of personal property and the exercise of political rights, establish a change of domicile.' "

"It should also be remembered that 'while declarations of deceased persons whose domicile or residence is indeterminate are always competent to disclose their intention, they should always be taken to point to a particular moment. It is for this reason that the last declarations of a deceased person are always higher evidence of last residence than earlier declarations.' "

We have shown innumerable occasions where the decedent referred to Florida as home, and there are many other instances in the record of Green's remarks tending to show his intention, as his conversation with Mr. Cleary in 1930 in regard to which Mr. Cleary testified as follows:

"Well, he spoke glowingly of Florida; he said he had been coming down there a long time and he loved it more and more as he went on; he felt better there and it was God's country and his place in Star Island he was going to make a lot of improvements and stay there more and more each year, and I know from my own knowledge afterwards he did make a lot of improvements the next year." (R. 9478.)

The above conversation took place in 1930.

In 1926 Green had purchased his Star Island property and was building his home there, when he remarked to Judge Norfleet:

> "Well, boys, I am going to make this my home now; you can get in touch with me any time, for this will be my home from now on."

Certainly the acts corroborate and support the truthfulness of his assertion and tend to show the state of Green's mind and his intention to make Star Island his real, true, fixed and permanent home.

In 1928 at Rome [illegible] Mr. Rutter:

> "I will see [illegible] Miami next fall."

This statement is another declaration of his mind and attitude toward the two places. He was physically located at the one, but thought of the other as his home. In 1928 while making extensive alterations and additions at his Star Island home, he told Mr. Brooks that he was building to suit himself and that he intended to live there the rest of his life. This declaration is supported and corroborated by specific acts and circumstances. One Sunday afternoon in 1929, when Green was parked in his automobile on the Venetian Causeway located across the bay from his Star Island home, he remarked:

> "I am just viewing my home over there,"

and he spoke in glowing terms of his home and pointed out the beauty of it.

In 1930 in talking with a citizen of Miami about other citizens who had built their houses and their homes there, he said,

"You know this is my home too . . . as well as yours."

This declaration which finds support in all circumstances, is one of the clearest possible indications of Green's intention with reference to his Florida home. He put himself on exactly the same basis as the other citizens of the community.

The declarations of Green in 1931 or 1932 when he was sitting on the front lawn of his home are proof positive of his earnestness and sincerity,

"Is not that beautiful, that's God's country! What more can a man ask than to live and have a home in a place like this."

The fact that he in later years returned to his home earlier and left later would corroborate the statement that he was always glad to get back home. The declaration in 1934 at his home on Star Island, made to his friend, Tucker:

"I am down here, I have this comfortable home, I have privacy, I can do as I damn please, and this is my home, and I expect to live here the rest of my days,"

is supported by every fact and circumstance in this case. This shows his state of mind and the intention that Star Island was his permanent home.

Thus we have continuous declarations running over a long period of time, written as well as oral (see discussion under Exception XXXI), pointing to particular moments, supported and corroborated by a multitude of

acts and circumstances completely in harmony with the facts and circumstances of the case, serving to illustrate Green's intention to make Star Island his real, true, fixed, and permanent home.

EXCEPTION XLIV.

"This defendant excepts to the conclusion stated on page 55 of the Master's report wherein he concluded the true criterion to be:

> 'The true criterion, therefore, for determining domicile where there are two homes seems to be the order of acquisition, etc,'

because the Master obviously failed to apply the further principle of law as follows:

> 'Where a man has two homes, and is domiciled in the earlier he may by a mere change of attitude toward his latter home come to have a principal home and therefore a domicile there.' "

Obviously the Master was strongly influenced in arriving at the conclusion that Green was domiciled in Massachusetts by the principle of law quoted from Beale, at page 190, that:

> "The true criterion, therefore, for determining the domicil where there are two homes seems to be the determination of the order of acquisition of the two homes."

This is good law as far as it goes, but the Master evidently did not give consideration to another equally

important principle of law announced by *Beale*, on page 191, as follows:

> "Predominant Home.—When a man has two homes, and is domiciled in the earlier, he may by a mere change of attitude toward his later home come to have a principal home and, therefore, a domicil there."

Again on page 192, *Beale* says:

> "This change of feeling by which what was formerly one of two equal homes becomes a predominant home may be exhibited in various ways: * * * The commonest way of showing the change of feeling described is by taking part in the local affairs of the chosen home to a greater extent than before, for instance by voting or holding office there."

Green did not vote or hold office in Florida, just as he did not in Massachusetts, but he was interested in good government as shown by the fact that he contributed to a campaign fund raised by the public-spirited citizens of Miami Beach to be used in electing Mr. Snedigar as Mayor of Miami Beach. That manifestation of interest in public affairs was more than he ever exhibited at South Dartmouth, or any other place in Massachusetts. He was engaged in business in Miami and not Massachusetts. He owned stock in the principal banks of Miami, and showed his interest in the local banking interests by lending one of the banks three-quarters of a million dollars on one occasion. He continued to show his interest in the community life of Miami Beach and greater Miami by his membership in various organiza-

tions and his contributions to the various community activities, which continued up to the time of his death; whereas his interest and membership in local organizations in Massachusetts had terminated several years prior to his death.

The Master overlooked these important facts in applying only the criterion as to which of the homes was first acquired. If it is a sound principle of law that domicil may be changed by a change of attitude toward one of two places, and if such change of attitude may be shown by a man's manner of living, then the things that Green did at Miami Beach and Miami in the latter years of his life should be given due weight in determining where his domicil was when he died. This important principle of law the Master obviously overlooked.

EXCEPTION XLV.

"This defendant excepts to the conclusion stated on pages 54 and 55 of the Master's report as follows:

> 'But under the authorities, the adoption of a changed location or a subsidiary or secondary home for the sake of health does not constitute the abandonment of the old and acquisition of a new domicile,'

because the Master assumes as a basis for said conclusion that the establishment by Green of his Star Island Home was subsidiary or secondary to his Round Hills place which presumption and conclusion is contrary to the ultimate fact established by a preponderance of the evi-

dence in the case, and further because the Master assumes as a basis for said conclusion that the establishment of the Star Island Home was primarily for the sake of health, and concludes that a change of domicile can not be induced by a consideration of health, which conclusion is contrary to the established principle of law."

Domicil may be changed, and the motive, whether for business, health, climate, pleasure or otherwise, is immaterial except as it indicates intention.

Kennan, page 322:

"Every person who is sui juris has the inalienable right to change his domicile, even though the motives which prompt him to make the change are questionable."

In re: Balch's Est. (1916) 93 Misc. 419, 156 N. Y. S. 1006, affd. without opinion in (1917) 175 App. Div. 933, 161 N. Y. S. 1117; *Estate of Brady* (1918) 177 Cal. 537, 171 Pac. 303; *Frame v. Thormann* (1899) 102 Wis. 653, 79 N. W. 39, affirmed in (1900) 176 U. S. 350, 44 L. ed. 500, 20 S. Ct. 446.

Beale, page 132:

"A person who is a normal adult may change his domicil and thereby acquire what is known as a domicil of choice."

In re: *Paullin's Estate*, 109 Atl. 13:

"In case of divided residence, I think it may be properly said that it is the existence of an

> actual residence at a particular place, accompanied by a present actual intention of making it a permanent home or a home for a time indefinite, that establishes a domicil, and that the motives that actuate the apparent intent are immaterial, except in so far as the motives may aid in determining whether the apparent intent was actual or merely pretended."

In re: Newcomb's Estate (1908), 192 N. Y. 238; 84 N. E. 950, text 954:

> "Motives are immaterial, except as they indicate intention. A change of domicil may be made through caprice, whim, or fancy, for business, health, or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention." (McConnell v. Kelley, 138 Mass. 372.)

Beale in his Treatise on the *Conflict of Laws*, page 144, discusses the case of *Hegeman v. Fox*, 31 Barb. 475 (N. Y. 1860), in which he says:

> "In Hegeman v. Fox, the question was whether the testator was at the time of his death domiciled in Florida. He was a native of Massachusetts, had been domiciled in New York City, afterward in Williamsburgh, New York, and then removed to Florida. There was no evidence of any intention to retain his domicil in Williamsburgh, and the opinion of the Court was that the weight of the evidence established

that he neither expected nor intended to return to the northern States. He purchased a plantation in Florida, stocked it, and furnished his house, went to housekeeping, entered into the business of planting, and made other family arrangements looking to a permanent residence there. Upon these facts it was held that the circumstance that this change of residence was induced by considerations of climate and health, and that domestic trouble intervening induced the expression of an intention to return to New York, did not overcome the effect of his acts, which clearly indicated an intention to make his permanent home in Florida."

In the *Hegeman-Fox case*, as in the instant case, the change of domicil to Florida was induced by considerations of climate and health, and the principles upon which that case was decided have an important bearing on the determination of Green's domicil on June 8, 1936.

In *Restatement of the Law of Conflict of Laws*, page 43, it is stated:

"The motive with which a person acquires a new dwelling-place does not determine the question of the establishment of a domicil of choice, but it may be important evidence tending to show whether or not, when a new dwelling-place is acquired, there is an intention to make a home there."

EXCEPTION L.

"This defendant excepts to the conclusion stated on page 56 of the Master's report, as follows:

> 'Round Hills was not only the earlier home but as the findings of fact show, it was the principal, predominant and permanent home when compared with the Star Island residence,'
>
> because the said conclusion is contrary to the ultimate fact established by a preponderance of the evidence in this case."

If a person has several places of residence and two or more are regarded by him as home and each has indications of being a home, that which is the principal home will be the domicil.

In *Restatement of the Law of Conflict of Laws*, p. 48, it is said:

> "When a person who has capacity to acquire a domicil of choice has more than one home, his domicil is in the earlier home, unless he regards the second home as his principal home.
>
> "Comment:
>
> a. If a man has two dwelling places, any one of the following situations may arise:
>
> 1. One may be a home in the sense used in this Restatement, and the other merely a residence.
>
> 2. Both may be homes in the sense used in this Restatement, but the second one may become his principal home. This may be because his civic and domestic interests attach themselves more and more to it rather than to the

other or for other reasons. In this case the principal home is the domicil."

Beale, pp. 191 and 192, says:

"When a man has two homes, and is domiciled in the earlier, he may by a mere change of attitude toward his later home come to have a principal home and therefore a domicil there.

"This change of feeling by which what was formerly one of two equal homes becomes a predominant home may be exhibited in various ways: By a change in the manner of life, as from life adapted to the city to that of a country gentleman; by establishing the family principally in one place rather than another; or in any other way of showing a distinct preference for the life of one home."

It has been conclusively shown that Green considered Star Island as his home. If Round Hills ever became the home of Green, there was such a decline of interest in Massachusetts and such an attachment of his civic and domestic interests to Star Island rather than Round Hills, that Star Island became his real, true, fixed and permanent home, and certainly his principal home.

The Master correctly found that the Star Island home was the *more homelike*. He states on page 54 of his Report:

"He went to Florida on the advice of his physician in 1924 and after living in hotels and on house boats, purchased three lots and built a beautiful home which he luxuriously furnished with everything necessary for his comfort. In

> Florida, he was able to be out daily in the sunshine and to avoid the chill of Northern winters and obtained relief from the arthritic condition which was sapping his vitality. Doubtless those who have visited both Round Hills and Star Island would prefer to live at the latter place, where there is every convenience, almost perpetual sunshine and a homelike atmosphere."

To be consistent, we can only interpret the Master's finding to mean that Green had a distinct preference for his Star Island home.

This preference is most important in determining principal home. His acts and declarations are entirely consistent, and certainly there can be no doubt that he did have a distinct preference for his Star Island home.

To further illustrate the fact that Star Island was the principal home of Green at the time of his death, we would apply the test heretofore outlined as factors considered in determining home.

1. Physical Characteristics.

The magnificent home of Green on Star Island designed for beauty and comfort and solely as a private residence for himself and family. It was the only home or place of residence that was his to do with entirely as he pleased.

He had no home in Texas, only an apartment rented from month to month in New York, and just a half interest in the Round Hills place, which, as contrasted with Star Island, was built for a public institution, and the grounds of which were open to the public and overrun with sightseers.

2. The Time He Spent Therein.

He spent more time in Florida in the latter years of his life than in any other place and the time spent there steadily increased. Florida was the only place after 1923 where Green ever stayed six months, and he spent his last three Christmases there.

3. The Things He Did Therein.

Green's interest steadily increased in Florida while it decreased in Massachusetts. He took much more interest in the community life of Florida than in any other place and did more *living* in his home there.

4. The Persons and Things Therein.

At Star Island Green had everything indicative of a real home; at Round Hills he was surrounded by every evidence of a museum and a memorial park.

5. His Mental Attitude Toward the Place.

Green had been sent to Chicago, Texas, and New York by his mother to look after her interests, and it was at his Mother's request that he went to Massachusetts. He came to Florida in behalf of his own interest. He came seeking health; he felt that it agreed with him and he came again. His interest grew and he bought property and built a residence. Gradually but surely, his attitude toward the place changed until it became "home" to him with all that the word means and implies. It was into this home, about it, and through it, that he sought to "express himself."

He gradually transferred his domestic, civic and general interests more to this place than any other, and as

his interest increased in Florida it decreased in both Massachusetts and New York.

Both his acts and declarations showed a distinct preference for his Star Island home.

When Green first came to Florida in 1923, he was a man 55 years of age. After having lived amidst the rush of the city in an apartment in New York and in the middle of a "public park" in Massachusetts, he unquestionably longed for a home where he could find comfort, peace and happiness, which had been denied him elsewhere. He found these in the quiet and serene dignity of his Star Island home where he had privacy and could do as he pleased.

6. His Intention When Absent to Return.

When Green left Florida "he went away on his vacation"; when he returned "he came home from a vacation." He intended to live the rest of his life and wind up his days in his home on Star Island, and it was from this home in 1936 that he was *sent* away to die.

7. Elements of Other Dwellings.

Round Hills was planned, designed and built to be a public institution—a part of the memorial to his mother and ancestors. The estate was open to the public and was visited by thousands of people, sometimes as many as twenty thousand in one day. Green said he was going to turn it over to the public and had laid it out with that in mind, but that he didn't see how it could be any more public than it was then. It was not characteristic of a home.

On the contrary, the Star Island home was his own private, individual home, built on his own land, with his

own funds, and he wanted it kept private and sacred. Consider, too, his declarations of love and affection, his interests and activities in the community, his eagerness to get back home and his plan to live there the rest of his days. It is inevitable that Star Island be determined his real, true, fixed and permanent home, and surely his principal home at the time of his death.

The Master concluded under the heading "Applicable Principles of Law" at page 49 of his report:

> "Where, as here, declarations and conduct are in conflict, declarations alone do not afford any safe guide in determining the issue, especially where they have been inspired by selfish motives."

And cited:

In re: Trowbridge's Estate, 266 N. Y. 283; 194 N. E. 756.

In re: Newcomb's Estate, 192 N. Y. 250; 84 N. E. 950.

He commented on page 50 of his report:

> "These two cases bear many points of resemblance to the case at bar and deserve careful consideration."

This defendant quoted at considerable length from the Trowbridge case in its request for findings (p. 97, et seq.) illustrating the resemblance between the two cases and also the resemblance between the claim of Florida in the present case and the claim of Connecticut in the Trowbridge case.

In that case Trowbridge sought to have his domicil in New York, had a house there that was boarded up, kept an office there which he visited daily, registered, voted, made his tax returns from there and otherwise invariably declared that New York was his legal residence and domicil, and certainly intended it to be.

However, he made his home in Noroton, Connecticut. He erected a home there in 1924 at a cost of half a million dollars. By this structure he sought to express himself. He embellished it with the family crest and coat of arms. He took a personal pride in having his family circle about him in the house he had built. He was interested in his flowers, his garden and his trees. He took pleasure in running his home and was distinctly a home man.

In re: Trowbridge's Estate, supra:

> "* * * If at a given time a man exclusively makes his home with his family in a complete domestic establishment, intending so to occupy it for the rest of his days, the place of that habitation is then his domicile, no matter what he may say to the contrary."

Certainly we cannot conceive of a case that bears a more striking resemblance, even to the details, than the Trowbridge case does to the case at bar. If you substituted the name Green for Trowbridge and Florida for Connecticut in showing what he did to make the place his home, the discrepancy could hardly be noted.

EXCEPTION LII.

"This defendant excepts to the statement or conclusion on page 57 of the Master's report as follows:

> 'Both were homes, but Round Hills was the earlier, predominant, and principal home,'

because said conclusion is contrary to the ultimate fact established by a preponderance of the evidence."

The Supreme Court of Mississippi said in the case of *McHenry v. State*, 119 Miss. 289, 80 So. 763, 766:

> "It is conceded that a man may have more than one place of residence, and under the experiences and environment of present-day methods and society, one frequently abides in more than one place in the course of a year. Traveling men and other agents are sent from their homes over a broad commercial field. Many are called upon to leave their permanent abode by the exigencies of business, the search of pleasure, and education. It is frequently said that a man can have but one domicile or legal residence and it is there where he assumes burdens and exercises the privileges of citizenship. This does not mean the claimant may establish a home at one place and merely claim to live at another. His claims must certainly be in good faith and laid upon a firm foundation. The married man must indeed have a 'home, sweet home' around which ultimately cluster all the beautiful sentiments of home."

And in the same case:

> "Our court in the Hairston Case quotes with approval from Judge Story, Confl. of Laws, page 45, Sec. 47: 'That even where a party has two residences at different seasons of the year,' 'that will be esteemed his domicile which he himself selects, or describes or deems to be his home, or which appears to be the center of his affairs, or where he votes or exercises the rights and duties of a citizen.'"

Hairston v. Hairston, 27 Miss. 704, 61 Am. Dec. 530.

The Supreme Court of Florida in the case of *Smith v. Croom*, supra, (1857), in a discussion of the various authorities, cited with approval *Phillmores Law of Domicil*, page 18, as follows:

> "Domicil answers very much to the common meaning of our word home, and where a person possesses two residences, the phrase 'he made the latter his home,' would point out that to be his domicil."

And our court comments:

> "We like this conception of the word home . . . it is the word whose essential meaning comes up fully to our idea of domicil. It is a word which admits not of qualification. To speak of a permanent home is to perpetrate a tautology —to speak of a temporary home is to involve a contradiction of terms. It is a word which finds its true interpretation in the instincts of our nature. It is a word the full meaning of which

is of universal appreciation; it is understood alike by the degraded savage and the classic Greek—by the Republican serf and the refined Roman. Wherever that spot is found there the law fixes the domicil of succession, it matters not whether that be upon the wasted hills of the 'North States' or on the virgin plains of the 'land of flowers.' The determination of that locality is the subject of evidence, and that evidence must establish two points—first an actual residence, and secondly the deliberate intention to make it his home, in the acceptation in which it is used in the foregoing citation."

EXCEPTION LIII.

"This defendant excepts to the ultimate finding and conclusion on page 57 of the Master's Report, as follows:

> 'Upon a careful consideration of all the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law, was in the Commonwealth of Massachusetts,'

for the following reasons:

(a) The said finding and conclusion is not supported by a preponderance of the evidence in the case.

(b) The preponderance of the evidence under applicable provisions of law support only the

conclusion that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, was in the State of Florida.

Therefore, this defendant requests that the said ultimate finding and conclusion be amended, so as to read as follows:

> 'Upon a careful consideration of all the evidence in the case under applicable provisions of law, it is found that the domicile of Edward Howland Robinson Green at the time of his death June 8, 1936, in fact and in law was in the State of Florida.' "

In discussing the preceding Exceptions to the Master's Report, we have endeavored to point out the record facts which, under the applicable principles of law, demonstrate inevitably that Green's Star Island home in Florida was at the time of his death his principal home, and therefore his domicil.

We have pointed out the outstanding characteristics of his Florida home in comparison with the Round Hills estate, and the rented apartment maintained as a residence in New York. We have shown that his Star Island home was the only residence which he owned exclusively, and that it was the only place designed and constructed as a home to the exclusion of other purposes. We have made no comparison of his Florida home with the home he formerly owned in Texas, because in our view of the case he had definitely abandoned his Texas home long prior to his death, and had not for many years maintained even a residence in Texas, and there is nothing in the record to indicate that he had any intention of ever re-establishing a home there.

We have shown that the time he spent in Florida increased year by year, while it decreased both in New York and Massachusetts.

We have shown that his activities in Florida indicate a greater attachment for and interest in his Star Island home and in the community in which it was located, than any other place where he maintained a residence during the last ten years of his life.

The only logical conclusion to be drawn from these considerations is that when Green died on June 8, 1936, his domicil in fact and in law was in the State of Florida, and we respectfully request and urge that the Court so find and decree, the Master's ultimate finding and conclusion to the contrary notwithstanding.

Respectfully submitted,

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